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No. _____

In The
Supreme Court of the United States
October Term, 1990

BETTY M. ROGERS, RAYMOND HARKRIDER,
Individually, and RAYMOND HARKRIDER,
as Personal Representative of the
Estate of Georgia Cory,

Petitioners,

v.

KATHRYN WILCOX and PHILIP E. WILCOX,
as Personal Representatives of the
Estate of Floyd E. Wilcox, Deceased,
KATHERINE WILCOX, Individually, ROY
McCANDLISH and RUBY McCANDLISH,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Indiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Indiana Court of Appeals' March 19, 1990 and March 20, 1990 Orders (collectively the "Subject Orders") are in error, and should be set aside, in that the Subject Orders violate Article I, Section 12, and Article VII, Section 6, of the Indiana Constitution and further violate the 5th and 14th Amendments of the United States Constitution, in failing to afford Petitioners their constitutional right to due process and equal protection under the law, in the following and other particulars:

A. Whether Petitioners were afforded an appropriate hearing or reasonable opportunity to be heard in connection with the findings of fact and conclusions of law reached and determined by the Indiana Court of Appeals concerning the propriety of legal services rendered by Petitioner's previous appellate counsel?

B. Whether Petitioners were unjustly and unlawfully prevented from exercising their right to one appeal, under Article VII, Section 6 of the Indiana Constitution?

C. Whether the Subject Orders unlawfully penalize Petitioners for seeking to exercise their constitutional right to one appeal and for refusing to waive such right with respect to the five count civil action appealed from?

QUESTIONS PRESENTED FOR REVIEW – continued

2. Whether the Subject Orders are unconstitutional, and should be set aside, in that the absence of a justiciable case in controversy deprived the Indiana Court of Appeals of original or appellate jurisdiction to determine whether Petitioners' previous appellate counsel fully, responsibly, professionally and ethically performed his professional responsibilities to Petitioners in connection with Petitioners' appeal?

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OPINIONS BELOW

This Petition for Certiorari arises from the following Orders of the Indiana Court of Appeals and Supreme Court of Indiana, each of which Orders appear in the Appendix as indicated below:

<u>Description</u>	<u>Appendix</u>
March 19, 1990 Order of the Indiana Court of Appeals purportedly holding, <i>inter alia</i> , that the Petitioners' appellate counsel should be absolved of responsibility for failure to timely file the Petitioners' appellants' brief in Petitioners' appeal	App. 38-41
March 20, 1990 Order of the Indiana Court of Appeals dismissing the Petitioners' appeal	App. 42-43
April 26, 1990 Notice of Order of the Indiana Court of Appeals denying Petitioners' Petition for Rehearing	App. 62
August 29, 1990 Notice of Order of the Supreme Court of Indiana denying Petitioners' Petition to Transfer	App. 78

GROUND ON WHICH JURISDICTION IS INVOKED

The Order of the Supreme Court of Indiana denying Petitioners' Petition to Transfer was entered by the Supreme Court of Indiana on August 29, 1990. This Petition was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 2101(c) and Rule 13 of the Revised Rules of the Supreme Court of the United States (eff. January 1, 1990).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 12 of the Indiana Constitution provides the following:

"All courts shall be open; and every person, for injury done to him in his person, property, or reputation, *shall have remedy by due course of law*. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." (Emphasis Supplied).

Specifically, with respect to appellate rights, Article VII, Section 6 of the Indiana Constitution mandates the following, in pertinent part:

"The Court [of Appeals] shall have *no original jurisdiction*, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rv'les which shall, however, provide in all cases an *absolute right to one appeal* and to the extent provided by rule, review and revision of sentences for defendants in all criminal cases." (Emphasis supplied).

Similarly, Amendments 5 and 14 of the United States Constitution require the following, respectively, in pertinent part:

Amendment 5: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

Amendment 14: Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners are the next of kin of Pearl Posey ("Pearl"), who died on March 19, 1982. Thereafter, on or about March 22, 1982, Floyd E. Wilcox ("Mr. Wilcox") was appointed personal representative of Pearl's estate by the Circuit Court of Tippecanoe County, Indiana. On or about August 16, 1982, Petitioners commenced a five count civil action ("Five Count Civil Action") against Mr. Wilcox, Mr. Wilcox's wife, Katherine Wilcox, and Roy and Ruby McCandlish, alleging and containing the following Counts:

Count I: An action against Mr. Wilcox, in his individual capacity, to recover for Pearl's estate title to Pearl's eighty (80) acre farm deeded to Mr. Wilcox while Mr. Wilcox served as Pearl's fiduciary;

Count II: An action against Mr. Wilcox, in his individual capacity, to require him to render a full and complete accounting in connection with any and all matters and transactions in which he was involved as Pearl's fiduciary;

Count III: An action against Mr. Wilcox, in his individual capacity, seeking to have Mr. Wilcox declared a constructive trustee of all assets and

benefits he had obtained while acting as Pearl's fiduciary;

Count IV: An action against Mr. Wilcox seeking to have Mr. Wilcox removed as the personal representative of Pearl's estate and to have June Nelson, Pearl's niece, appointed personal representative of Pearl's estate;

Count V: A will contest.

Venue was subsequently changed in the Five Count Civil Action to the Circuit Court of Warren County, Indiana. Since its inception, and prior to initiation of the appeal giving rise to this Petition for Certiorari, exclusive jurisdiction over the issues involved in the Five Count Civil Action was, on change of venue, in the Warren Circuit Court. After a trial on the merits of all five counts of Petitioners' Five Count Civil Action, the Warren Circuit Court, on March 23, 1989, entered its "Findings of Fact, Conclusions and Judgment," finding against Petitioners on each of the five counts. On May 22, 1989, Petitioners timely filed their "Motion to Correct Errors" in the Warren Circuit Court, which motion was denied, after hearing, on August 8, 1989. On September 6, 1989, Petitioners timely filed their "Praecipe for the Record of Proceedings" with the Warren Circuit Court, thereby initiating the appeal to the Court of Appeals made the subject of this Petition for Certiorari.

On December 5, 1989, the Record of Proceedings in Petitioners' appeal was filed with the Clerk of the Indiana Court of Appeals, thus establishing the time for filing of Petitioners' appellant's brief as January 5, 1989. On or about December 8, 1989, Petitioners' previous appellate counsel, William W. Knowles ("Mr. Knowles"), filed his

first motion for extension of time within which to file Petitioners' appellant's brief, which time was extended, by December 18, 1989 Order of the Indiana Court of Appeals, through and including February 5, 1990. Copies of Mr. Knowles' first motion for extension, and a notice of the order granting same, appear at Apps. 1-3 and 4, respectively. On January 19, 1990, Petitioners' counsel, Mr. Knowles, filed his second motion for extension of time within which to file Petitioners' appellant's brief, which time was extended, by January 24, 1990 Order of the Indiana Court of Appeals, through and including February 26, 1990. A copy of Mr. Knowles' second motion for extension, together with the Court's "order stamp" granting same, appear at App. 5-8. On or about February 15, 1990, Petitioners' counsel, Mr. Knowles, filed his third motion for extension of time within which to file Petitioners' appellant's brief, which time was extended, by February 22, 1990 Order of the Indiana Court of Appeals, through and including March 7, 1990. A copy of Mr. Knowles' third motion for extension, and a notice of the Order granting same, appear at Apps. 10-14 and 15, respectively.

On or about the afternoon of February 27, 1990, less than nine (9) calendar days and seven (7) business days before the March 7, 1990 expiration of the Indiana Court of Appeals' last extension, Mr. Knowles transmitted to Mr. Harkrider, on behalf of Petitioners, a telecopy of Mr. Knowles' proposed appellant's brief ("Proposed Brief") which Mr. Knowles proposed to file on behalf of Petitioners in the appeal. Please see the sworn affidavit of Raymond Harkrider ("Mr. Harkrider's Affidavit"), a copy of which was

attached to Petitioners' Petition for Rehearing in the Indiana Court of Appeals and appears as Exhibit A to App. 58-59. At the bottom of page four of the Proposed Brief, Mr. Knowles stated the following:

"Although judgment was entered in favor of defendants on five counts, this appeal involves only Count 1 regarding the validity of the transfer of Pearl's 80A farm to Wilcox."

A copy of page four of the Proposed Brief appears at App. 9. As further verified in Mr. Harkrider's Affidavit:

A. Prior to receipt of the Proposed Brief on the afternoon of February 27, 1990, Petitioners had experienced significant difficulty in obtaining substantive information from Mr. Knowles concerning Mr. Knowles' impressions and strategies in connection with the appeal, as well as the proposed contents of the Proposed Brief;

B. Not until the afternoon of February 27, 1990, upon receipt and review of the Proposed Brief, did Petitioners have knowledge that Mr. Knowles intended to expressly waive Petitioners' constitutional right, under Article VII, Section 6 of the Indiana Constitution, to appellate review of the Warren Circuit Court's judgment against Petitioners on Counts II, III, IV and V of the Five Count Civil Action;

C. The very next day, on February 28, 1990, Mr. Harkrider, on behalf of Petitioners, contacted Mr. Knowles by telephone and informed Mr. Knowles that:

1. The Proposed Brief was unacceptable to Petitioners;
2. Petitioners wished to exercise their constitutional right to appellate review of the Warren Circuit Court's judgment against

Petitioners on *all five* counts of the Five Count Civil Action;

3. Mr. Knowles was not authorized to file or otherwise submit the Proposed Brief to the Indiana Court of Appeals or to the appellees in the appeal; and,

4. Mr. Knowles' authorization to proceed forward in the appeal was being withdrawn by Petitioners, subject to Mr. Knowles' and Petitioners' mutual agreement on the preparation of an appellant's brief acceptable to Petitioners.

On March 1, 1990, without the knowledge, authority or approval of Petitioners, Mr. Knowles filed with the Indiana Court of Appeals his fourth petition for extension of time within which to file Petitioners' appellant's brief, in which motion Mr. Knowles alleged, among other things, the following:

"5. [The Court of Appeals] has seen fit to award sanctions against appellants in previous actions for (among other things) their 'attempt to reargue many of the same issues already decided . . . ' *In Re Guardianship of Posey* (1988), Ind.App., 532 N.E.2d 9, 11.

6. [The Court of Appeals] has also criticized previous briefs for 'needless redundancy', 'argument which lacked cogency', and for the manner in which they were written which required 'the maximum expenditure of time by both [appellee] and by this Court'. *In Re Guardianship of Posey* (1986), Ind.App. 513 N.E.2d 674, 677.

7. I have prepared the appellant's brief in the case at hand to the best of my ability and in compliance with Indiana Rules of Appellate Procedure, but my client, Appellant, Raymond

Harkrider, disapproves of the brief and has directed me to include several additional issues.

8. I respect my client's wishes but I cannot in good faith, include the issues which he has demanded that I include.

9. I have advised my client that I will not revise the brief to include allegedly omitted issues and that I will be filing a motion to withdraw my appearance if he cannot approve the filing of the brief which I have prepared.

10. I represented in my third petition for extension of time that 'absent extreme and unforeseen circumstances, no further extensions will be requested and appellant's brief will be filed on or before March 7, 1990.' (See paragraph 10). I, therefore, attach a copy of the proposed appellant's brief which has been rejected by appellant and represent that I have done everything in my power to comply with the current March 7th deadline.

11. I believe that my withdrawal of appearance would constitute an extreme and unforeseen circumstance that would justify an additional extension of time to allow Mr. Harkrider the opportunity to hire new counsel to prepare a brief more to his liking."

A copy of Mr. Knowles' fourth motion for extension appears at App. 16-20. On March 9, 1990, the Indiana Court of Appeals entered its "Order" providing the following, in pertinent part:

"IT IS THEREFORE ORDERED as follows:

1. William W. Knowles, counsel for the appellants, is directed to file with the Clerk of this Court, the Brief of the Appellants which he has prepared in this appeal and he is granted ten (10) days from the date of this Order within

which to finalize the preparation of said Brief and to file the same with the Clerk of this Court;

2. William W. Knowles is granted leave to withdraw his appearance from his appeal after the filing of the appellant's Brief if he so desires;

3. The appellants' Fourth Verified Petition for Extension of Time to File Appellants' Brief is denied in all other respects."

A copy of the March 9, 1990 Order appears at App. 21-22.

Upon learning of the filing of Mr. Knowles' request for a fourth extension of time and the entry of the Indiana Court of Appeals' March 9, 1990 Order, Petitioners, on or about March 11, 1990, *tendered* to the Indiana Court of Appeals, *pro se*, their "Objections to Filing 'Brief of Appellants' Proposed by William W. Knowles - Request for Time to Obtain Other Counsel, Etc.'" ("Petitioners' Objections"), in which Petitioners alleged and confirmed the facts and circumstances alleged in Mr. Harkrider's Affidavit including, *inter alia*, that Mr. Knowles' representational authority in the appeal was withdrawn by Petitioners on February 28, 1990, and that Mr. Knowles' filing of the Proposed Brief was highly prejudicial to Petitioners' rights and interests. A copy of Petitioners' Objections appears at App. 26-33. In Petitioners' Objections, Petitioners requested of the Indiana Court of Appeals the following relief:

"23.1 That Pearl's family be permitted to file these objections and requests;

23.2 To strike from the records of this Court Knowles' proposed BRIEF OF APPELLANTS;

23.3 In the alternative - to disregard Knowles' proposed BRIEF OF APPELLANTS and any inferences therefrom or effects thereof that might be damaging to interests of Pearl's family; and

23.4 To grant Pearl's family reasonable time to locate and retain other counsel who will enter appearance and represent Pearl's family in these proceedings and to grant such other counsel reasonable time to prepare and file on behalf of Pearl's family appellants' brief and other appropriate documents." (Emphasis Supplied).

Please see App. 32-33, at pp. 5-6.

On March 13, 1990, without Petitioners' knowledge, authority or approval, Mr. Knowles filed with the Indiana Court of Appeals his "Request for Relief from Court Order and Fifth Verified Petition for Extension of Time to File Appellants' Brief, Pursuant to IND. R. APP. P. 14(A)" ("Request for Relief"), a copy of which appears at App. 23-25. In his Request for Relief, Mr. Knowles alleged the following:

1. Pursuant to this Court's Order of March 9, 1990, the undersigned, counsel for appellants, is directed to file appellant's brief by March 19, 1990.
2. Pursuant to Appellant, Raymond Harkrider's instruction, the undersigned, counsel for appellants, has been directed *not* to file the brief.
3. The undersigned owes a duty to the Court and a duty to his client and said duties are in conflict.
4. Thus, the undersigned files his Motion for Leave to Withdraw Appearance contemporaneously herewith and requests that Appellant,

Raymond Harkrider, be granted additional time to seek alternate counsel."

Please see App. 24, at p. 2. With the Request for Relief, Mr. Knowles also filed his Motion for Leave to Withdraw Appearance, a copy of which appears at App. 35-37.

On March 19, 1990, the Indiana Court of Appeals entered its "Order" providing, in pertinent part:

"And the Court, having examined said Request, Petition and Motion, taking judicial notice of its own records in this case and being duly advised, now finds that the record of the proceedings was filed in this cause on December 5, 1989; that on December 8, 1989 the appellants filed their first Petition for Extension of Time to File Brief which was granted, to and including February 5, 1990; that on January 19, 1990 the appellants filed their Second Petition for Extension of Time to File Appellants' Brief which was granted to and including February 26, 1990, said extension being ordered as "Final Extension"; that on February 15, 1990 the appellants filed their Third Petition for Extension of Time in Which to File Appellants' Brief which was granted to and including March 7, 1990; that on March 1, 1990 the appellants filed their Fourth Petition for Extension of Time to File Appellants' Brief alleging therein that counsel for the appellants had prepared, what in his professional judgment, was an appropriate appellants' brief in this appeal, but that the appellant Raymond Harkrider, was not satisfied with the brief as counsel had prepared it, insisting that various issues which counsel had not presented should be advanced and argued, which counsel asserted he could not in good conscience advance and argue to this Court in light of previous opinions of this Court on previous appeals brought by

the appellant Harkrider, to which the appellees filed their Appellees' Objections; that attached to the appellants' Fourth Petition for Extension of Time to File Appellants' Brief, as an exhibit thereto, was a copy of the proposed appellants' Brief as had been prepared by William W. Knowles, counsel for the appellants, as evidence of his good faith effort to comply with the Court's order granting the appellants' Third Petition for Extension of Time to File Brief of Appellants, to and including March 7, 1990; that this Court, after having examined the tendered draft of appellants' brief as prepared by attorney William W. Knowles, and having found the same to have been prepared in good workmanship manner and in accordance with the requirements of Appellate Rules 8.2 and 8.3, this Court issued its Order on March 9, 1990, directing attorney William W. Knowles to file said brief with the Clerk of this Court within ten (10) days from the date of said Order, and granted William W. Knowles leave to withdraw his appearance for the appellants, if he so desired; that the appellant *Raymond Harkrider directed attorney William W. Knowles not to comply with the March 9, 1990 Order of this Court* and the appellant Raymond Harkrider also advised the Court, by telephone, that he had directed attorney William W. Knowles not to file the appellants' brief as had been prepared by attorney William W. Knowles; the Court further finds that William W. Knowles has attempted to comply with the Order of this Court heretofore issued on March 9, 1990, but that he has been prevented from complying by reason of the directions from his client, the appellant Raymond Harkrider; that the appellants must accept the consequences of *Raymond Harkrider's obstinance* in refusing to accept and in specifically directing attorney William W. Knowles, not to file the appellants' brief which William W. Knowles had prepared;

the Court further finds that William W. Knowles has performed his duty to prepare the appellants' brief in this appeal, and that by reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles should be *absolved from any and all responsibility* from the failure to timely file the appellants' brief, on or before March 19, 1990, as previously ordered by this Court; the Court further finds that the Motion for Leave to Withdraw Appearance filed by William W. Knowles should be granted; the Court further finds that the Fifth Verified Petition for Extension of Time to File Appellants' Brief should be denied.

IT IS THEREFORE ORDERED as follows:

1. The Request for Relief from Court Order is granted, and that part of this Court's Order heretofore made and entered in this cause on March 9, 1990, which directed William W. Knowles to file with the Clerk of this Court the brief of the appellants which he had prepared is vacated;
2. The Motion for Leave to Withdraw Appearance filed by William W. Knowles is granted and he is *absolved from any and all responsibility to file a brief on behalf of the appellants in this cause and from any liability from having not filed a brief on behalf of the appellants*, due to the specific direction and instruction from the appellant Raymond Harkrider;
3. The Fifth Verified Petition for Extension of Time to File Appellants' Brief is denied.

ALL OF WHICH IS ORDERED this 19th day of March, 1990." (Emphasis Supplied).

A copy of the March 19, 1990 Order appears at App. 38-41.

On March 20, 1990, the Indiana Court of Appeals entered its "Order" dismissing Petitioners' appeal for failure to file an appellants' brief on or before March 19, 1990, as previously ordered by the Indiana Court of Appeals. A copy of the March 20, 1990 dismissal Order appears at App. 42-43. On April 9, 1990, Petitioners filed their Verified Petition for Rehearing in the Indiana Court of Appeals seeking rehearing on the Subject Orders, which petition was denied by the Indiana Court of Appeals on April 26, 1990. A copy of the Verified Petition for Rehearing and notice of order denying rehearing appear at Apps. 44-61 and 62, respectively. On May 16, 1990, Petitioners filed a Petition to Transfer in the Supreme Court of Indiana, which petition was denied by the Supreme Court of Indiana on August 29, 1990. A copy of the Petition to Transfer and notice of order denying transfer appear at Apps. 63-77 and 78, respectively. The allegations of error and constitutional infirmities discussed in this Petition for Certiorari were raised by the Petitioner in both their Verified Petition for Rehearing and Petition to Transfer. By means of this Petition for Certiorari, Petitioners now seek review of, and certiorari in connection with, the Subject Orders.

**ARGUMENT: REASONS RELIED ON
FOR ALLOWANCE OF THE WRIT**

The Subject Orders Violate Article I, Section 12, And Article VII, Section 6, Of The Indiana Constitution, And Further Violate The 5th and 14th Amendments To The United States Constitution, In Failing To Afford Pearl's Family Their Constitutional Right To Due Process And Equal Protection Under The Law As Well As Their Right To One Appeal.

Perhaps no provisions in the history of American jurisprudence have given rise to more judicial inquiry

than the due process mandates of the 5th and 14th Amendments of the United States Constitution. Similarly, a wealth of case law addresses analogous mandates appearing at Article I, Section 12 of the Indiana Constitution. Throughout the rich body of case law surrounding and emanating from these mandates has been recognized an inalienable right with which no court can differ: It is unconstitutional to deprive any individual of property without giving notice and an opportunity for a hearing appropriate to the nature of the case. *Mullane v. Central Hanover Trust Company* (1950), 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652; *Armstrong v. Manzo* (1965), 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187; *Podgor v. Indiana University* (1978), 178 Ind.App. 245, 381 N.E.2d 1274; *Whirlpool Corporation v. Review Board of the Indiana Employment Security Division* (1982), Ind.App., 438 N.E.2d 775; *Powers v. State* (1986), Ind. App., 498 N.E.2d 981; *In the Matter of Briggs* (1987), Ind., 502 N.E.2d 879. In Indiana, this mandate has been further defined as requiring:

- (a) reasonable notice,
- (b) an opportunity for a fair hearing, and
- (c) the right to have a court of competent jurisdiction hear one's cause.

Powers v. State, supra, at 986; Quoting: *McKee v. Hasler* (1951), 229 Ind. 437, 98 N.E.2d 657, 668.

In the Subject Orders, the Indiana Court of Appeals, acting on an *ex parte* basis as a *finder of fact*, reached factual and legal conclusions concerning Mr. Knowles' legal services to Petitioners, without providing Petitioners a meaningful notice or opportunity to be heard, all in violation of the 5th and 14th Amendments of the

United States Constitution and Article 1, Section 12 of the Indiana Constitution. In attempting to exercise original jurisdiction in an appellate forum, the Indiana Court of Appeals also violated Article VII, Section 6 of the Indiana Constitution.

By properly and timely initiating an appeal to the Indiana Court of Appeals from the Warren Circuit Court's negative judgment, the Petitioners placed before the Indiana Court of Appeals only those issues relating to the merits of the Five Count Civil Action, not issues concerning the propriety of their appellate counsel's acts. While Indiana courts have jurisdiction to decide all issues properly brought before them, as well as those ancillary to such issues, Indiana courts are without jurisdiction to determine or decide issues foreign to the proceeding:

"It is a general principal of the law that courts have no power to adjudicate matters not involved in the issues in causes pending before them. Litigants do not place themselves for all purposes under the control of the court, and it is only the interests involved in the particular suit that can be affected by the adjudication. Over other matters, the court has no jurisdiction, and any decree or judgment relating thereto is void."

Hutts et al v. Martin (1893), 134 Ind. 587, 33 N.E. 676, 678; Citing: *Freem. Judgm.* (14th Ed.), Section 120; *McFadden v. Ross* (1886), 108 Ind. 512, 8 N.E. 161; *Ringgenberg v. Hartman* (1890), 124 Ind. 186, 24 N.E. 987; *Morrison's Southern Plaza Corp. v. Southern Plaza* (1968), 144 Ind.App. 45, 242 N.E.2d 636; *Heck v. Selig* (1963), 134 Ind.App. 336, 188 N.E.2d 118. Indeed, the Indiana Court of Appeals has stated and the Supreme Court of Indiana has affirmed:

"No question of law is better settled than that a judgment which a court attempts to render upon an issue which is not presented is a nullity."

Moore v. Moore (1924), 81 Ind.App. 169, 173, 135 N.E. 362, 363; *Citing: Wayne Pike Company v. Hammons, et al* (1891), 129 Ind. 368, 27 N.E. 487; *Trook v. Crouch* (1924), 82 Ind.App. 309, 137 N.E. 773; *Christ v. Jovanoff* (1926), Ind.App. 676, 151 N.E. 26, 152 N.E. 2; *Hutts, supra; Ferger v. Perin Oil Refining Company, Inc.* (1950), 120 Ind.App. 174, 90 N.E.2d 131.

By means of the Subject Orders, the Indiana Court of Appeals reached the following determinations upon issues *never properly brought before the Indiana Court of Appeals* and upon which *Petitioners never had an opportunity to be heard*:

1. The Proposed Brief was prepared in "good workmanship manner";
2. Mr. Harkrider "directed attorney William W. Knowles not to comply with the March 9, 1990 Order" of the Indiana Court of Appeals;
3. Mr. Knowles attempted to comply with the March 9, 1990 Order of the Indiana Court of Appeals, but was "prevented from complying by reason of the direction of the Appellant, Raymond Harkrider";
4. The disagreement of Petitioners and Mr. Knowles concerning the appropriate contents of the Petitioners' appellant's brief was due to Mr. Harkrider's "obstinacy", for which Petitioners should suffer and "accept the consequences";
5. Mr. Knowles "has performed his duty to prepare the appellant's brief in this appeal";
6. Mr. Knowles "should be absolved from any and all responsibility from the failure to timely file the appellant's brief".

With respect to each of the above findings, the Indiana Court of Appeals had only the self-serving, *ex parte* statements of Mr. Knowles before it. It is critical to note that after February 28, 1990, Mr. Knowles' representational authority to act on behalf of Petitioners in Petitioners' appeal was withdrawn by the Petitioners. Despite this fact, Mr. Knowles continued to file with the Indiana Court of Appeals unauthorized pleadings and papers, including the Proposed Brief, solely for the purpose of attempting to establish for his *own* benefit, his performance of his responsibilities to the Indiana Court of Appeals and Petitioners. The filing of self-serving, unauthorized pleadings has previously been made the subject of an Indiana attorney discipline action. *In the Matter of Briggs, supra.* In any case, given the self-serving nature of Mr. Knowles' filings reflected on their face, none of the filings made after February 28, 1990 can be reasonably considered filings made on behalf of Petitioners. Thus, after February 28, 1990, Petitioners were unrepresented in their appeal and were never heard in connection with any of the matters addressed in the Subject Orders.

It is also critical in this Court's analysis of Petitioners' Petition for Certiorari to recognize that the Indiana Court of Appeals never had before it a justiciable controversy concerning whether Mr. Knowles fulfilled his responsibilities to his clients in connection with the appeal. While it is not the purpose of this Petition for Certiorari to discuss in detail the merits of that issue, it suffices to say that where an attorney presents a "last minute" appellant's brief waiving appeal on four of five appealable counts of the underlying claim, after seeking

three separate extensions of time within which to file such appellant's brief, he may reasonably expect to have his actions and/or omissions scrutinized. One thing is clear, upon learning on February 27, 1990 that Mr. Knowles proposed to waive four of five appealable counts, Petitioners had insufficient time within which to hire substitute counsel to review the proceedings and prepare an acceptable appellant's brief. Issues concerning whether Mr. Knowles' acts and omissions surrounding these circumstances were responsible and appropriate were not before the Indiana Court of Appeals in a justiciable form which would confer upon the Indiana Court of Appeals either original or appellate jurisdiction to decide whether Mr. Knowles should or should not be absolved of liability in connection with these acts. Petitioners were given no opportunity to be heard concerning their "version of the facts", nor to even admit or deny any of the self-serving statements made by Mr. Knowles, not even a party to the appeal, in his post-February 28, 1990 filings. Indeed, in a desperate attempt to inform the Indiana Court of Appeals that their lawyer was not speaking on their behalf, Petitioners *tendered* to the Indiana Court of Appeals, *pro se*, Petitioners' Objections, in which Petitioners *requested leave* to voice their position concerning these matters. To date, the Indiana Court of Appeals has neither ruled upon Petitioners' Objections, nor granted leave for Petitioners to even file them.

Had Petitioners been given notice and an opportunity to be heard concerning the matters addressed in the Subject Orders, they would have shown, as verified in Mr. Harkrider's Affidavit, that:

1. Petitioners had experienced significant difficulty in obtaining substantive information from Mr. Knowles concerning Mr. Knowles' impressions and strategies in connection with their appeal, as well as the proposed contents of their appellants' brief;
2. Petitioners did not learn of Mr. Knowles' intention to waive four of the five appealable counts until February 27, 1990;
3. Immediately upon learning of Mr. Knowles' intention to waive four of the five appealable counts, Petitioners, on February 28, 1990, informed Mr. Knowles that:
 - a. The Proposed Brief was unacceptable;
 - b. Petitioners wished to appeal all five appealable counts;
 - c. Mr. Knowles was not authorized to submit the Proposed Brief to the Indiana Court of Appeals;
 - d. Mr. Knowles was not authorized to proceed forward until and unless he and Petitioners were able to reach a mutual agreement concerning the appropriate contents of Petitioners' appellants' brief.
4. Mr. Harkrider's direction to Mr. Knowles not to submit the Proposed Brief came *before* the entry of the Indiana Court of Appeals' March 9, 1990 Order and Mr. Harkrider *never* directed Mr. Knowles to disregard or otherwise violate the Court of Appeals' March 9, 1990 Order.

From the above, it is inescapable that issues concerning the propriety of Mr. Knowles' acts and omissions, and any potential liability flowing therefrom, were not

properly before the Indiana Court of Appeals, thus depriving the Indiana Court of Appeals of both original and appellate jurisdiction to determine such issues. Moreover, even had such issues been properly before the Indiana Court of Appeals, Petitioners received no appropriate notice or opportunity to be heard concerning these matters. Had they received such notice and opportunity, Petitioners would have demonstrated to the Indiana Court of Appeals' satisfaction that their failure to timely file their appellants' brief was due *not* to Mr. Harkrider's "obstinance", but rather to Petitioners' good faith refusal to waive their constitutional right to one appeal on all five appealable counts of the Five Count Civil Action. It is well settled that "to punish a person for exercising a constitutional right is a due process violation of the most basic sort." *Borden Kirscher v. Hayes* (1978), 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604.

The injustice of the Indiana Court of Appeals' *ex parte* ruling concerning the propriety of Mr. Knowles' acts or omissions is vividly demonstrated with reference to a related proceeding. At App. 79-80 appears a copy of an Amended Complaint, filed against Mr. Harkrider by Mr. Knowles, seeking payment of Twenty-Three Thousand Three Hundred Seventy-One and 16/100 Dollars (\$23,371.16), together with interest and costs, for legal fees and expenses allegedly incurred by Mr. Knowles in preparation of the Proposed Brief. App. 81-86 is a copy of a "Motion for Summary Judgment" and "Memorandum in Support of Motion" filed by Mr. Knowles in that proceeding, in which Mr. Knowles argues that he is entitled to summary judgment based upon the Indiana Court of Appeals' holding that he had "performed his duty to

prepare the Appellants' Brief." Please see App. 84. The value, if any, of Mr. Knowles' services, in light of the dismissal of Petitioners' appeal due to Mr. Knowles' attempted waiver, will be at issue in that proceeding in the form of affirmative defenses and counterclaims raised by Mr. Harkrider. While, as previously noted, a court's ruling on issues not before the court is null and void against the parties, Mr. Knowles has demonstrated his intention to argue that the Indiana Court of Appeals' purported absolution of Mr. Knowles in the Subject Orders forecloses affirmative defenses or counterclaims otherwise available to Mr. Harkrider in the related proceeding. If Mr. Knowles is to be absolved of liability in connection with his acts or omissions in representing Petitioners, it should only be after a full and complete judicial inquiry based upon the facts, circumstances and arguments of *both* parties, not simply the *ex parte*, self-serving, unauthorized pleadings of one. It is axiomatic that the Indiana Court of Appeals could not have conducted such an inquiry, prior to purportedly absolving Mr. Knowles of responsibility, without granting Petitioners the reasonable notice and opportunity to be heard to which they were constitutionally entitled.

While it is undeniable that the Indiana Court of Appeals possesses the authority and discretion to enforce its rules and manage cases brought before it, as well as to take judicial notice of the quality of lawyer's work product filed in its records, it is equally undeniable that no court has the discretion to amend or disregard constitutional mandates or exercise a judicial discretion exceeding the limitations imposed thereby. *Zehrlaut v. State* (1951), 230 Ind.App. 175, 102 N.E.2d 203. The Indiana

Court of Appeals exceeded and abused its discretion in foreclosing Petitioners' constitutional right to one appeal in this proceeding and by deciding against Petitioners' issues which were never properly before the Indiana Court of Appeals and in connection with which Petitioners never received notice or an opportunity to be heard.

CONCLUSION

By means of the Subject Orders, the Indiana Court of Appeals denied Petitioners their right to one appeal from the Warren Circuit Court's judgment and punished Petitioners for their unwillingness to waive this right. Moreover, by means of the Subject Orders, the Indiana Court of Appeals made factual and legal determinations upon issues effecting Petitioners' rights without ever having these issues properly brought before the Indiana Court of Appeals. Petitioners never received notice or an opportunity to be heard concerning the propriety of Mr. Knowles' acts in connection with the appeal, nor concerning the cause for Petitioners' inability to timely file their appellant's brief therein. The only allegations before the Indiana Court of Appeals on these issues were *ex parte* ones, of a non-party, Mr. Knowles, who was acting at the time of the allegations in a manner designed to protect his *own* interests, not those of his clients. Without having a justiciable controversy before it, the Indiana Court of Appeals was without jurisdiction, either appellate or original, to determine these issues. In seeking to exercise original jurisdiction and decide nonjusticiable issues without appropriate notice and hearing, the Indiana

Court of Appeals violated Petitioners' rights under the Indiana and United States Constitutions. As a matter of national judicial policy, this honorable Court should not countenance by any court, state or federal, trial or appellate, such blatant disregard for litigant's constitutional rights.

Accordingly, and for all of the foregoing reasons, justice requires that this honorable Court:

1. Grant Petitioners' Petition for Certiorari;
2. Vacate and set aside the Indiana Court of Appeals' Orders of March 19, 1990 and March 20, 1990;
3. Issue a writ of *certiorari* to the Supreme Court of Indiana mandating further and appropriate proceedings consistent with such writ; and,
4. Grant any and all other relief which it deems proper in the premises.

Respectfully submitted,

DOUGLAS R. BROWN
STEWART & IRWIN
Two Market Square Center,
Suite 1100
251 East Ohio Street
Indianapolis, Indiana 46204-2118
317-639-5454



IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

GEORGIA CORY, BETTY M.) APPEAL FROM
ROGERS AND RAYMOND) THE WARREN
HARKRIDER,) COUNTY
Plaintiffs-Appellants,) CIRCUIT COURT
vs.) CAUSE NO.
KATHRYN WILCOX and PHILIP) 83-C-168
E. WILCOX, as Personal) HONORABLE
Representative of the Estate) ROBERT M.
of Floyd E. Wilcox, Deceased;) HALL, JUDGE
KATHRYN WILCOX, individually,)
ROY McCANDLISH and RUBY)
McCANDLISH,)
Defendants-Appellees.)

VERIFIED PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)
(Filed Dec. 8, 1989)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360
Attorney for Appellants

Stephen R. Pennell, Esquire
STUART & BRANIGAN
The Life Building
Post Office Box 1010
Lafayette, IN 47902
317-423-1561
Attorney for Appellees

**VERIFIED PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)**

Comes now William W. Knowles, attorney for appellants, and petitions the Court to extend the time in which he has to file appellant's brief. In support of this petition, William W. Knowles alleges and says:

1. The Record of the Proceedings was filed on December 5, 1989, and consists of 1,404 pages in 7 volumes.
2. I was not the attorney of record for the appellants in the trial court proceedings in this case and I did not participate directly or indirectly in said trial court proceedings.
3. The Record of the Proceedings was prepared for filing by attorney Donn H. Wray, who represented the appellants in the trial court proceeding.
4. I received the Record of the Proceedings for the first time on December 6, 1989, and said Record is the first and only documentation which I have received regarding this appeal.
5. I have had a vacation out-of-state scheduled for the holidays for several months.
6. Due to the voluminous nature of the Record, my complete unfamiliarity with it, and my limited time in the office through the holidays and the press of other business in the office, thirty (30) days is an insufficient amount of time in which to prepare the appellant's brief.

WHEREFORE, attorney for appellants respectfully requests a 60-day extension, to and including March 7, 1990, in which to file appellant's brief.

I affirm under the penalties for perjury that the foregoing representations are true.

BAKER, ORBISON, BALES
& KNOWLES

/s/ William W. Knowles
William W. Knowles
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of December, 1989, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P. O. Box 1010
Lafayette, IN 47902

/s/ William W. Knowles
William W. Knowles

William W. Knowles
BAKER, ORBISON, BALES & KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317-848-4360

STATE OF INDIANA

CLERK OF THE SUPREME COURT
COURT OF APPEALS AND TAX COURT
DANIEL ROCK HEISER, CLERK
217 STATE HOUSE

SEAL
INDIANAPOLIS, 46204
TELEPHONE 317-232-1930

WILLIAM WESLEY KNOWLES
811 S. RANGELINE RD.
CARMEL IN 46032-0000

Cause Number

86A04-8912-CV-00544
LOWER CAUSE
83C168

CORY, GEORGIA ET AL VS WILCOX, KATHRYN ET AL
ESTATE OF:

You are hereby notified that the COURT OF APPEALS has on this day 12/18/89 APPELLANT'S PETITION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED TO AND INCLUDING FEBRUARY 5, 1990.
WESLEY W. RATLIFF, JR., CHIEF JUDGE.

WITNESS my name and the seal of said Court.

this day of 18TH DECEMBER, 1989

/s/ Dan Heiser
Clerk Supreme Court, Court
of Appeals and Tax Court

APPELLANTS Second FINAL EXTENSION
PETITION FOR EXTENSION
OF TIME TO FILE BRIEF
GRANTED TO AND INCLUDING FEBRUARY 26 1990

Chief Judge
/s/ Wesley W. Ratliff, Jr.

1-24-90

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

GEORGIA CORY, BETTY M. ROGERS AND RAYMOND HARKRIDER, Plaintiffs-Appellants,	) APPEAL FROM THE WARREN COUNTY CIRCUIT COURT CAUSE NO. 83-C-168
KATHRYN WILCOX and PHILIP E. WILCOX, as Personal Representative of the Estate of Floyd E. Wilcox, Deceased; KATHRYN WILCOX, individually, ROY McCANDLISH and RUBY McCANDLISH, Defendants-Appellees.	) HONORABLE ROBERT M. HALL, JUDGE

SECOND VERIFIED PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)
(Filed Jan. 19, 1990)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360

Attorney for Appellants

Stephen R. Pennell, Esquire
STUART & BRANIGAN
The Life Building
Post Office Box 1010
Lafayette, IN 47902
317-423-1561

Attorney for Appellees

**VERIFIED PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)**

Comes now William W. Knowles, attorney for appellants, and petitions the Court to extend the time in which he has to file appellant's brief. In support of this petition, William W. Knowles alleges and says:

1. The Record of the Proceedings was filed on December 5, 1989, and consists of 1,404 pages in 7 volumes.
2. I was not the attorney of record for the appellants in the trial court proceedings in this case and I did not participate directly or indirectly in said trial court proceedings.
3. The Record of the Proceedings was prepared for filing by attorney Donn H. Wray, who represented the appellants in the trial court proceeding.
4. I received the Record of the Proceedings for the first time on December 6, 1989, and said Record is the first and only documentation which I have received regarding this appeal.
5. I vacationed out-of-state over the Christmas holidays.

App. 7

6. On December 7, 1989, I requested an extension of time to March 7, 1990, to file appellant's brief and on December 18, 1989, I was granted an extension "to and including February 5, 1990".

7. I have now studied four of the seven volumes of the record. It is a slow and tedious process, but I feel I owe it to my clients and to this Court to study every line.

8. Due to the voluminous nature of the Record, my complete unfamiliarity with it, my limited time in the office through the holidays and the press of other business in the office, the original extension to February 5, 1990, is an insufficient amount of time in which to prepare appellant's brief.

WHEREFORE, attorney for appellants respectfully requests an additional 30-day extension, to and including March 7, 1990, within which to file appellant's brief.

I affirm under the penalties for perjury that the foregoing representations are true.

BAKER, ORBISON, BALES
& KNOWLES

/s/ William W. Knowles
William W. Knowles
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of January, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P. O. Box 1010
Lafayette, IN 47902

/s/ William W. Knowles
William W. Knowles

William W. Knowles
BAKER, ORBISON, BALES & KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360

Page 4 of Proposed Brief

* * *

It is therefore ordered, adjudged and decreed based upon the foregoing Findings and Conclusions that the plaintiffs herein shall take nothing by way of their complaint under any of the counts therein and therefore Judgment should be and hereby is entered for the defendants. It is specifically ordered that the "deed in escrow" of November 9, 1977 be and hereby is declared valid; no additional accounting is required of the estate of Mr. Wilcox (Mr. Wilcox having died subsequent to Mrs. Posey); no constructive trust is created for the benefit of the estate of Mrs. Posey; no error was committed by the appointment of Mr. Wilcox as Executor of the estate of Mrs. Posey; and the Last Will and Testament of Mrs. Posey executed April 16, 1980 is hereby adjudged valid and the probate thereof confirmed.

Judgment is therefore entered in favor of Defendants and against Plaintiffs. All at Plaintiffs' costs with this matter to be remanded to the Tippecanoe Circuit Court for further proceedings not inconsistent with the Findings Of Fact, Conclusions and Judgment entered herein.

Clerk is directed to forward file marked copies of this Order to counsel of record.

Entered this 23rd day of March, 1989.

(R. vol.4 at 966-67)

Although judgment was entered in favor of defendants on five counts, this appeal involves only Count 1 regarding the validity of the transfer of Pearl's 80A farm to Wilcox.

* * *

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

GEORGIA CORY, BETTY M. ROGERS AND RAYMOND HARKRIDER,	)	APPEAL FROM THE WARREN COUNTY CIRCUIT COURT
Plaintiffs-Appellants,	)	CAUSE NO. 83-C-168
vs.	)	HONORABLE ROBERT M. HALL, JUDGE
KATHRYN WILCOX and PHILIP E. WILCOX, as Personal Representative of the Estate of Floyd E. Wilcox, Deceased;)	
KATHRYN WILCOX, individually, ROY McCANDLISH and RUBY McCANDLISH,)	
Defendants-Appellees.)	

THIRD VERIFIED PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)
(Filed Feb. 15, 1990)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360
Attorney for Appellants

Stephen R. Pennell, Esquire
STUART & BRANIGAN
The Life Building
Post Office Box 1010
Lafayette, IN 47902
317-423-1561
Attorney for Appellees

THIRD PETITION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)

Comes now William W. Knowles, attorney for appellants, and petitions the Court to extend the time in which he has to file appellant's brief. In support of this petition, William W. Knowles alleges and says:

1. This is the third petition for extension of time to file appellant's brief, the first and second petitions having been filed on December 8, 1989, and January 19, 1990, respectively. This Court's Order granting the second extension of time stated that it would be the final extension.
2. The Record of the Proceedings was filed on December 5, 1989, and consists of 1,404 pages in 7 volumes.
3. I was not the attorney of record for the appellants in the trial court proceedings in this case and I did not participate directly or indirectly in said trial court proceedings.
4. I was not involved in any way with previous appeals which are at least tangentially related to this appeal which are reported as follows:
 - a. *Posey v. Wilcox* (1983) Ind.App., 451 N.E.2d 1135 (unpublished Memorandum Opinion July 20, 1983).
 - b. *In re the Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674.
 - c. *Posey v. Lafayette Bank & Trust Co.* (1987) Ind., 512 N.E.2d 155.

d. *In re Guardianship of Posey* (1988)
Ind.App., 532 N.E.2d 9.

e. *In re Estate of Posey* No. 79A02-8801-CV-8, Opinion For Publication issued January 24, 1990.

5. This Court has seen fit to award sanctions against appellants in previous actions for (among other things) their "attempt to reargue many of the same issues already decided . . ." *In re Guardianship of Posey* (1988) Ind.App., 532 N.E.2d 9, 11.

6. This Court has also criticized previous briefs for "needless redundancy", "argument which lacked cogency", and for the manner in which they were written which required "the maximum expenditure of time by both [appellee] and by this Court". *In re Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674, 677.

7. In addition to the voluminous record in the instant appeal, counsel has also had to study the five previous appeals in order to avoid reargument of issues addressed in those previous appeals.

8. My associate and I have expended approximately 187 hours to date in studying the record, studying the previous five appeals and honing the issues for the instant appeal.

9. It is the desire and expectation that appellant's brief will be in conformance with appellate rules, will not reargue issues previously ruled upon, will be concise and cogent, and will be written in a matter calculated to require the *minimum* expenditure of time by both the appellee and by this Court.

10. Appellant realizes that two previous petitions for extension of time to file appellant's brief have been filed, but would request *only* that he be granted a 9-day extension to March 7, 1990, which was the requested extension in the first petition for extension of time, and would represent that, absent extreme and unforeseen circumstances, no further extensions will be requested and appellant's brief will be filed on or before March 7, 1990.

WHEREFORE, attorney for appellants respectfully requests an additional 9-day extension, to and including March 7, 1990, within which to file appellant's brief.

I affirm under the penalties for perjury that the foregoing representations are true.

BAKER, ORBISON, BALES &
KNOWLES

/s/ William W. Knowles
William W. Knowles
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of February, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P. O. Box 1010
Lafayette, IN 47902

App. 14

/s/ William W. Knowles
William W. Knowles

William W. Knowles
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317-848-4360

STATE OF INDIANA

CLERK OF THE SUPREME COURT
COURT OF APPEALS AND TAX COURT
DANIEL ROCK HEISER, CLERK
217 STATE HOUSE

SEAL
INDIANAPOLIS, 46204
TELEPHONE 317-232-1930

WILLIAM WESLEY KNOWLES
811 S. RANGELINE RD,
CARMEL IN 46032-0000

Cause Number

86A04-8912-CV-00544
LOWER CAUSE
83C168

CORY, GEORGIA ET AL VS WILCOX, KATHRYN ET AL
ESTATE OF:

You are hereby notified that the COURT OF APPEALS has on this day 2/22/90 APPELLANT'S PETITION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED TO AND INCLUDING MARCH 7, 1990. WESLEY W. RATLIFF, JR., CHIEF JUDGE.

WITNESS my name and the seal of said Court,
this day of 22ND FEBRUARY, 1990

/s/ Dan Heiser
Clerk Supreme Court, Court
of Appeals and Tax Court

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

GEORGIA CORY, BETTY M.)	
ROGERS and RAYMOND	)	APPEAL FROM
HARKRIDER,	)	THE WARREN
Plaintiffs-Appellants,	)	COUNTY
vs.	)	CIRCUIT
	)	COURT
KATHRYN WILCOX and PHILIP)	
E. WILCOX, as Personal	)	CAUSE NO.
Representative of the Estate of	)	83-C-168
Floyd E. Wilcox, Deceased;)	
KATHRYN WILCOX, individually,	)	HONORABLE
ROY McCANDLISH and RUBY	)	ROBERT M.
McCANDLISH,	)	HALL, JUDGE
Defendants-Appellees.)	

FOURTH VERIFIED PETITION FOR EXTENSION
OF TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)
(Filed Mar 1, 1990)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360
Attorney for Appellants

Stephen R. Pennell,
Esquire
STUART & BRANIGAN
The Life Building
Post Office Box 1010
Lafayette, IN 47902
317/423-1561
Attorney for Appellees

FOURTH PETITION FOR EXTENSION OF TIME
TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)

Comes now William W. Knowles, attorney for appellants, and petitions the Court to extend the time in which he has to file appellant's brief. In support of this petition, William W. Knowles alleges and says:

1. This is the fourth petition for extension of time to file appellant's brief, the first, second and third petitions having been filed on December 8, 1989, and January 19, and February 15, 1990, respectively.
2. The Record of the Proceedings was filed on December 5, 1989, and consists of 1,404 pages in 7 volumes.
3. I was not the attorney of record for the appellants in the trial court proceedings in this case and I did not participate directly or indirectly in said trial court proceedings.
4. I was not involved in any way with previous appeals which are at least tangentially related to this appeal which are reported as follows:
 - a. *Posey v. Wilcox* (1983) Ind.App., 451 N.E.2d 1135 (unpublished Memorandum Opinion July 20, 1983).
 - b. *In re the Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674.
 - c. *Posey v. Lafayette Bank & Trust Co.* (1987) Ind., 512 N.E.2d 155.
 - d. *In re Guardianship of Posey* (1988) Ind.App., 532 N.E.2d 9.

e. *In re Estate of Posey* No. 79A02-8801-CV-8, Opinion For Publication issued January 24, 1990.

5. This Court has seen fit to award sanctions against appellants in previous actions for (among other things) their "attempt to reargue many of the same issues already decided . . ." *In re Guardianship of Posey* (1988) Ind.App., 532 N.E.2d 9, 11.

6. This Court has also criticized previous briefs for "needless redundancy", "argument which lacked cogency", and for the manner in which they were written which required "the maximum expenditure of time by both [appellee] and by this Court". *In re Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674, 677.

7. I have prepared the Appellant's Brief in the case at hand to the best of my ability and in compliance with Indiana Rules of Appellate Procedure, but my client, Appellant, Raymond Harkrider, disapproves of the brief and has directed me to include several additional issues.

8. I respect my client's wishes but I cannot in good faith, include the issues which he has demanded that I include.

9. I have advised my client that I will not revise the brief to include allegedly omitted issues and that I will be filing a motion to withdraw my appearance if he cannot approve the filing of the brief which I have prepared.

10. I represented in my third petition for extension of time that "absent extreme and unforeseen circumstances, no further extensions will be requested and appellant's brief will be filed on or before March 7, 1990." (See Paragraph 10). I, therefore, attach a copy of the

proposed appellant's brief which has been rejected by appellant and represent that I have done everything in my power to comply with the current March 7th deadline.

11. I believe that my withdrawal of appearance would constitute an extreme and unforeseen circumstance that would justify an additional extension of time to allow Mr. Harkrider the opportunity to hire new counsel to prepare a brief more to his liking.

WHEREFORE, I would ask this Court to grant an additional extension of time which would allow me to withdraw my appearance and allow my client to retain other counsel.

I affirm under the penalties for perjury that the foregoing representations are true.

BAKER, ORBISON, BALES
& KNOWLES
/s/ William W. Knowles
William W. Knowles
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of March, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P.O. Box 1010
Lafayette, IN 47902

App. 20

/s/ William W. Knowles
William W. Knowles

William W. Knowles
BAKER, ORBISON, BALES & KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360

(ATTACHMENT OMITTED)

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

GEORGIA CORY, BETTY)	
M. ROGERS and RAYMOND)	
HARKRIDER,)	
)	
Appellant,)	
)	
vs.)	
KATHRYN WILCOX and PHILIP	)	CAUSE NO.
E. WILCOX, as Personal	)	86A04-8912-
Representative of the Estate of	)	CV-544
Floyd E. Wilcox, Deceased,)	
KATHRYN WILCOX, individually,)	
ROY McCANDLISH and RUBY)	
McCLANDLISH,)	
)	
Appellees.)	

ORDER
(Filed Mar. 9, 1990)

Comes now William W. Knowles, attorney for the appellants, and files herein his Fourth Verified Petition for Extension of Time to File Appellant's Brief, alleging therein that he has prepared the appellants' Brief in this cause but that his client, appellant Raymond Harkrider, disapproves of the brief and has directed him to include several additional issues which counsel alleges that he cannot in good faith include and counsel for the appellants attaches to said Petition as an exhibit thereto a copy of the Brief of Appellants which he has prepared and prays for an additional extension of time in order to grant the appellants the opportunity to hire new counsel in the event the appellants do not approve of the filing of the brief which counsel has prepared, which said Fourth

Verified Petition is more particularly in the following words and figures, to-wit:

(H. I.)

And the Court, having examined these matters, and being duly advised, now finds that William W. Knowles, counsel for the appellants, should be directed to file with the Clerk of this Court the brief of the appellants which he has prepared, that he should be given ten (10) days in which to finalize the preparation of said Brief and file the same, and thereafter he should be granted leave to withdraw his appearance for the appellants if he so desires.

IT IS THEREFORE ORDERED as follows:

1. William W. Knowles, counsel for the appellants, is directed to file with the Clerk of this Court, the Brief of the Appellants which he has prepared in this appeal and he is granted ten (10) days from the date of this Order within which to finalize the preparation of said Brief and to file the same with the Clerk of this Court;
2. William W. Knowles is granted leave to withdraw his appearance from his appeal after the filing of the appellant's Brief if he so desires;
3. The appellants' Fourth Verified Petition for Extension of Time to File Appellants' Brief is denied in all other respects.

ORDERED this 9th day of March, 1990.

/s/ Wesley W. Ratliff, Jr.
CHIEF JUDGE

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

GEORGIA CORY, BETTY	)	APPEAL FROM
M. ROGERS and RAYMOND	)	THE WARREN
HARKRIDER,	)	COUNTY
Plaintiffs-Appellants,	)	CIRCUIT
vs.	)	COURT
KATHRYN WILCOX and PHILIP	)	CAUSE NO.
E. WILCOX, as Personal	)	83-C-168
Representative of the Estate of	)	HONORABLE
Floyd E. Wilcox, Deceased;	)	ROBERT M.
KATHRYN WILCOX, individually,	)	HALL, JUDGE
ROY McCANDLISH and RUBY)	
McCANDLISH,)	
Defendants-Appellees.)	

REQUEST FOR RELIEF FROM COURT ORDER AND
FIFTH VERIFIED PETITION FOR EXTENSION
OF TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)
(Filed Mar 13, 1990)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360
Attorney for Appellants

Stephen R. Pennell,
Esquire
STUART & BRANIGAN
The Life Building
Post Office box 1010
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317/423-1561
Attorney for Appellees

**REQUEST FOR RELIEF FROM COURT ORDER AND
FIFTH PETITION FOR EXTENSION
OF TIME TO FILE APPELLANT'S BRIEF
PURSUANT TO IND.R.APP.P. 14(A)**

Comes now William W. Knowles, attorney for appellants, and files his Fifth Verified Petition for Extension of Time to File Appellant's Brief. In support of said request and motion, the undersigned would show the Court as follows:

1. Pursuant to this Court's Order of March 9, 1990, the undersigned, counsel for appellants, is directed to file appellant's brief by March 19, 1990.
2. Pursuant to Appellant, Raymond Harkrider's, instruction, the undersigned, counsel for appellants, has been directed *not* to file the brief.
3. The undersigned owes a duty to the Court and a duty to his client and said duties are in conflict.
4. Thus, the undersigned files his Motion for Leave to Withdraw Appearance contemporaneously herewith and requests that appellant, Raymond Harkrider, be granted additional time to seek alternate counsel.

WHEREFORE, the undersigned respectfully requests that he be granted relief from this Court's order of March 9, 1990; that he be allowed to withdraw his appearance; and, that appellants be granted an additional extension of time to allow them to seek alternate counsel.

I AFFIRM UNDER THE PENALTIES FOR PERJURY
THAT THE FOREGOING REPRESENTATIONS ARE
TRUE.

BAKER, ORBISON, BALES
& KNOWLES

/s/ William W. Knowles
William W. Knowles

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of March, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P.O. Box 1010
Lafayette, IN 47902

/s/ William W. Knowles
William W. Knowles

William W. Knowles
BAKER, ORBISON, BALES & KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO 86A04-8912-CV-544

GEORGIA CORY BETTY)	
M ROGERS and RAYMOND	)	APPEAL FROM
HARKRIDER	)	THE WARREN
Plaintiffs-Appellants	)	COUNTY
v	)	CIRCUIT
KATHRYN WILCOX and PHILIP	)	COURT
E WILCOX, as Personal)	
Representative of the Estate of	)	CAUSE NO
Floyd E Wilcox Deceased	)	83-C-168
KATHRYN WILCOX individually	)	HONORABLE
ROY McCANDLISH and RUBY	)	ROBERT M HALL
McCANDLISH	)	JUDGE
Defendants-Appellees)	

OBJECTIONS TO FILING "BRIEF OF APPELLANTS"
PROPOSED BY WILLIAM W KNOWLES - REQUEST
FOR TIME TO OBTAIN OTHER COUNSEL ETC.

(Filed Mar. 12, 1990)

BETTY ROGERS RAYMOND HARKRIDER and RAYMOND HARKRIDER as executor of will of Georgia Cory deceased object to filing in this Court of "BRIEF OF APPELLANTS" proposed by William W Knowles (Knowles) and request reasonable time to obtain other counsel etc. and respectfully show the Court:

1. Betty Rogers (Betty) is a niece of Pearl Posey deceased (Pearl) being daughter of Velma Pollman a deceased sister of Pearl; Raymond Harkrider (Raymond) is brother of Pearl; Raymond is also executor of will of Georgia Cory a deceased sister of Pearl.

2. Pearl never had any children. Betty Raymond individually and Raymond as executor of will of Georgia Cory deceased - hereinafter referred to as "Pearl's family" - are sole heirs at law and next of kin of Pearl and sole beneficiaries of Pearl's residuary estate - Betty and Raymond each owning 50% thereof. Raymond is authorized to represent Betty with respect to her interest in Pearl's estate and in this litigation.

3. Since October 1926 Raymond has been admitted to practice law in Illinois and since then has been actively engaged in practice of law with offices in Chicago Illinois.

4. March 19 1982 Pearl died. August 16 1982 Pearl's family commenced their five count civil action against Pearl's fiduciary Floyd Wilcox (Wilcox) as principal defendant and others in Tippecanoe Circuit Court case no C-417-82 by complaint containing five counts as follows:

Count I - against fiduciary Wilcox defendant in his individual capacity to retrieve Pearl's 80 acre farm for Pearl's estate;

Count II - against fiduciary Wilcox defendant in his individual capacity to require him to make and render a full and complete accounting in respect of all matters and transactions in which he was involved as Pearl's fiduciary;

Count III - against fiduciary Wilcox defendant in his individual capacity to have him declared constructive trustee of all benefits he had obtained as trustee or fiduciary for Pearl;

Count IV - against Wilcox defendant in his individual capacity and as purported executor of Pearl's purported will to have Wilcox removed as purported executor and June Nelson appointed executor or representative of Pearl's estate in his stead; and

Count V – against Wilcox defendant in his individual capacity and as purported executor to have Pearl's purported will dated April 16 1980 declared invalid and probate thereof set aside.

5. Wilcox and Katherine Wilcox his wife and Roy and Ruby McCandlish were made defendants in their individual capacities to Count IV and Count V because Pearl's purported will contained \$1000 bequest to Wilcox and wife and \$1000 bequest to Roy and Ruby McCandlish.

6. Pearl's family requested that five count civil action be tried to jury.

7. On motion of Pearl's family five count civil action was on or about December 12 1983 venued to Warren County Circuit Court no 83-C-168.

8. November 2 1988 Warren County Circuit Court ruled among other things that all five counts of five count civil action would be tried by Court and not by jury – contrary to Pearl's family request.

9. March 28 1989 after two days of trial by Court without jury Warren County Circuit Court entered findings conclusion and judgment denying Pearl's family any relief on any of five counts contained in their complaint.

10. August 8 1989 Warren County Circuit Court denied Pearl's family motion to correct errors. Pearl's family caused a timely praecipe for record to be filed and on December 5 1989 caused record of proceedings – which consisted of some 1,404 pages of 7 volumes – to be filed in this Court.

11. The size of the record would indicate that Pearl's family had invested substantial amounts for legal expenses which together with the size and nature of their claims against Pearl's fiduciary Wilcox in their five count civil action mandated that they have competent legal counsel to represent them in their contemplated appeal to this Court. Not being acquainted with local lawyers Pearl's family sought help from referral service of Indianapolis Bar Association and was given the name of Knowles among others.

12. After being apprised of the nature of the case and the desires of Pearl's family to appeal the action of the Warren County Circuit Court on all five counts of their complaint Knowles indicated he would handle the appeal and submitted his form of *LEGAL REPRESENTATION AGREEMENT* dated December 4 1989 which Pearl's family accepted and signed.

13. Knowles' December 4 1989 *LEGAL REPRESENTATION AGREEMENT* in *PART I* provided among other things:

THIS AGREEMENT, between William W. Knowles ("Counsel"), an attorney * * * and Raymond Harkrider, Individually and as Executor of will of Georgia Cory and as Attorney-In-Fact for Betty Rogers ("Client"), WITNESSETH:

"That on the date written below [12-4-89] Client has employed Counsel to act as Client's attorney in the following matter: To handle the appeal of the five-count civil action styled as Georgia Cory, et al., Plaintiffs (Appellants) v. Kathryn Wilcox as Personal Representative of the Estate of Floyd Wilcox, Deceased, et al., Defendants (Appellees), presently pending in the Warren County Circuit Court under Cause

No. 83C-168; and Counsel has accepted such employment upon the following terms:"

14. Here follows various provisions including **LEGAL REPRESENTATION AGREEMENT PART II** and following provisions of **PART II**:

"I. Scope of Engagement

A. Matter Involved. The Client has engaged Counsel to undertake the legal representation of the Client in a matter described in Part I of this Agreement (hereinafter referred to as the "Matter"). The parties agree that Counsel's engagement also extends to related ancillary matters, the resolution of which may become required for proper representation of the Client in the principal Matter.

B. Counsel Functions. By the terms of this Agreement, Counsel will perform all necessary or proper legal services relevant to the Matter, and the resolution or disposition thereof. Counsel undertakes to use reasonable care, skill and knowledge in his/her representations of Client in regard to the aforesaid Matter, within the bounds of the law and the Code of Professional Responsibility."

* * *

"D. Authorization and Decision Making. The Client authorizes and directs the Counsel to take all actions in respect to the Matter which Counsel deems advisable on the Client's behalf. Counsel agrees to notify the Client promptly of all significant developments, and to consult with the Client in advance as to any significant decisions attendant to those developments."

(emphasis supplied)

* * *

"III. Termination of Representation

Either party may terminate this Agreement at will * * *

15. According to Knowles' time charges he has had custody of the record of proceedings since December 6 1989.

16. By February 15 1990 Knowles claimed that he and his associates had expended approximately 187 hours to this appeal.

17. Nevertheless Knowles did not until February 27 1990 submit to Pearl's family his proposed BRIEF OF APPELLANTS for their examination and approval. Raymond hurriedly examined Knowles' proposed BRIEF OF APPELLANTS and concluded it was not acceptable for various reasons. Surprisingly and without prior notice to Pearl's family Knowles purported without authority to waive Pearl's family right to appeal from Warren County Circuit Court's adverse rulings on their counts II III IV and V. At page 4 Knowles said:

"Although judgment was entered in favor of defendants on five counts, this appeal involves only Count I regarding the validity of the transfer of Pearl's 80A farm to Wilcox."

18. Knowles' proposed BRIEF OF APPELLANTS in opinion of Raymond contained other deficiencies which need not be detailed here.

19. February 28 1990 Raymond promptly contacted Knowles and in lengthy telephone conversation called his attention to various objections to his proposed BRIEF OF APPELLANTS. Raymond stated that Knowles did not have authority to waive Pearl's family rights to appeal

from Warren County Circuit Court's adverse rulings in their counts II III IV and V and directed Knowles not to file his proposed BRIEF OF APPEALS in this Court.

20. Apparently Knowles - in violation of above mentioned direction and without authority so to do - on March 1 1990 filed in this Court copy of his proposed BRIEF OF APPELLANTS by way of attachment to his FOURTH PETITION FOR EXTENSION OF TIME TO FILE APPELLANTS' BRIEF.

21. Pearl's family says that Knowles' proposed BRIEF OF APPELLANTS is damaging to interests of Pearl's family has never been approved or accepted by Pearl's family but on contrary has been and is hereby again rejected by Pearl's family and that the filing thereof in this Court by Knowles was without authority and in violation of directions of Pearl's family.

22. Pearl's family is currently engaged in locating and retaining other counsel who will enter appearance and represent Pearl's family in these proceedings including preparation and filing of proper brief for and on behalf of Pearl's family - the appellants herein.

23. WHEREFORE Pearl's family respectfully asks the Court:

23.1 That Pearl's family be permitted to file these objections and requests;

23.2 To strike from the records of this Court Knowles' proposed BRIEF OF APPELLANTS;

23.3 In the alternative - to disregard Knowles' proposed BRIEF OF APPELLANTS and any inferences therefrom or effects thereof

that might be damaging to interests of Pearl's family; and

23.4 To grant Pearl's family reasonable time to locate and retain other counsel who will enter appearance and represent Pearl's family in these proceedings and to grant such other counsel reasonable time to prepare and file on behalf of Pearl's family appellants' brief and other appropriate documents.

Respectfully submitted

BETTY ROGERS
RAYMOND HARKRIDER
RAYMOND HARKRIDER
as executor of will of
Georgia Cory deceased

by /s/ Raymond Harkrider
Raymond Harkrider

RAYMOND HARKRIDER
3 First National Plaza
suite 1950
Chicago IL 60602
312/726-0236

AFFIRMATION

I affirm under penalties for perjury that the foregoing representations are true.

/s/ Raymond Harkrider
Raymond Harkrider

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 1990 a true and complete copy of above and foregoing document was served on each person hereinafter named by depositing

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same in United States mail enclosed in envelopes properly addressed to each such person with sufficient first class postage affixed: Stuart & Branigan The Life Building P O Box 1010 Lafayette IN 47902; William W Knowles 811 South Rangeline Road Carmel IN 46032.

/s/ Raymond Harkrider
Raymond Harkrider

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO 86A04-8912-CV-544

GEORGIA CORY, BETTY)
M. ROGERS and RAYMOND) APPEAL FROM
HARKRIDER,) THE WARREN
Plaintiffs-Appellants,) COUNTY
vs.) CIRCUIT
KATHRYN WILCOX and PHILIP) COURT
E. WILCOX, as Personal) CAUSE NO.
Representative of the Estate of) 83-C-168
Floyd E. Wilcox, Deceased;)
KATHRYN WILCOX, individually,) HONORABLE
ROY McCANDLISH and RUBY) ROBERT M.
McCANDLISH,) HALL, JUDGE
Defendants-Appellees.)

MOTION FOR LEAVE TO WITHDRAW APPEARANCE
(Filed Mar. 13, 1990)

William W. Knowles
BAKER, ORBISON, BALES
& KNOWLES
811 South Rangeline Road
Carmel, IN 46032
317/848-4360
Attorney for Appellants

Stephen R. Pennell,
Esquire
STUART & BRANIGAN
The Life Building
Post Office Box 1010
LaFayette, IN 47902
317/423-1561
Attorney for Appellees

MOTION FOR LEAVE TO WITHDRAW APPEARANCE

Comes now the law firm of BAKER, ORBISON,
BALES & KNOWLES, by William W. Knowles and

respectfully moves the Court to grant it leave to withdraw its appearance with respect to the appellants, Georgia Cory, Betty M. Rogers, and Raymond Harkrider, in the above-referenced cause of action for the reasons set forth in the following memorandum in support of motion.

Respectfully submitted,
BAKER, ORBISON, BALES &
KNOWLES

/s/ William W. Knowles
William W. Knowles

MEMORANDUM IN SUPPORT OF MOTION

In support of the foregoing motion, the undersigned would respectfully inform the Court as follows:

1. Conflicts have arisen between counsel and client which cannot be resolved and the attorney/client relationship has deteriorated to such a point between Mr. Harkrider and the undersigned that counsel cannot render effective assistance to appellants.
2. Counsel cannot comply with the instructions given to him by his client, said instruction being *not* to file appellant's brief, and, at the same time comply with this Court's order to file said brief by March 19, 1990.
3. This motion is made with the knowledge of the defendant as is evidenced by a copy of this Motion being served on appellants.

WHEREFORE, for the above reason, the undersigned would respectfully request that this motion be granted.

Respectfully submitted,
BAKER, ORBISON, BALES &
KNOWLES

/s/ William W. Knowles
William W. Knowles

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of March, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Mr. Stephen R. Pennell
STUART & BRANIGAN
The Life Building
P.O. Box 1010
Lafayette, IN 47902

/s/ William W. Knowles
William W. Knowles

William W. Knowles
BAKER, ORBISON, BALES & KNOWLES
811 South Rangeline Road
Carmel, IN 46032

317/848-4360

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

GEORGIA CORY, BETTY)
M. ROGERS and RAYMOND)
HARKRIDER,)
Appellants,)
vs.)
KATHRYN WILCOX and PHILIP) CAUSE NO.
E. WILCOX, as Personal) 86A04-8912-
Representative of the Estate of) CV-544
Floyd E. Wilcox, Deceased;)
KATHRYN WILCOX, individually,)
ROY McCANDLISH and RUBY)
McCANDLISH,)
Appellees.)

ORDER
(Filed Mar. 19, 1990)

Comes now William W. Knowles, attorney for the appellants, and files herein his Request for Relief From Court Order and Fifth Verified Petition for Extension of Time to File Appellants' Brief Pursuant to Ind. R. App. P. 14(A), and his Motion for Leave to Withdraw Appearance, which said Request, Petition and Motion are more particularly in the following words and figures, to-wit:

(H. I.)

And the Court, having examined said Request, Petition and Motion, taking judicial notice of its own records in this case and being duly advised, now finds that the record of the proceedings was filed in this cause on

December 5, 1989; that on December 8, 1989 the appellants filed their first Petition for Extension of Time to File Brief which was granted, to and including February 5, 1990; that on January 19, 1990 the appellants filed their Second Petition for Extension of Time to File Appellants' Brief which was granted to and including February 26, 1990, said extension being ordered as "Final Extension"; that on February 15, 1990 the appellants filed their Third Petition for Extension of Time in Which to File Appellants' Brief which was granted to and including March 7, 1990; that on March 1, 1990 the appellants filed their Fourth Petition for Extension of Time to File Appellants' Brief alleging therein that counsel for the appellants had prepared, what in his professional judgment, was an appropriate appellants' brief in this appeal, but that the appellant Raymond Harkrider, was not satisfied with the brief as counsel had prepared it, insisting that various issues which counsel had not presented should be advanced and argued, which counsel asserted he could not in good conscience advance and argue to this Court in light of previous opinions of this Court on previous appeals brought by the appellant Harkrider, to which the appellees filed their Appellees' Objections; that attached to the appellants' Fourth Petition for Extension of Time to File Appellants' Brief, as an exhibit thereto, was a copy of the proposed appellants' Brief as had been prepared by William W. Knowles, counsel for the appellants, as evidence of his good faith effort to comply with the Court's order granting the appellants' Third Petition for Extension of Time to File Brief of Appellants, to and including March 7, 1990; that this Court, after having examined the

tendered draft of appellants' brief as prepared by attorney William W. Knowles, and having found the same to have been prepared in good workmanship manner and in accordance with the requirements of Appellate Rules 8.2 and 8.3, this Court issued its Order on March 9, 1990, directing attorney William W. Knowles to file said brief with the Clerk of this Court within ten (10) days from the date of said Order, and granted William W. Knowles leave to withdraw his appearance for the appellants, if he so desired; that the appellant Raymond Harkrider directed attorney William W. Knowles not to comply with the March 9, 1990 Order of this Court and the appellant Raymond Harkrider also advised this Court, by telephone, that he had directed attorney William W. Knowles not to file the appellants' brief as had been prepared by attorney William W. Knowles; the Court further finds that William W. Knowles has attempted to comply with the Order of this Court heretofore issued on March 9, 1990, but that he has been prevented from complying by reason of the directions from his client, the appellant Raymond Harkrider; that the appellants must accept the consequences of Raymond Harkrider's obstinance in refusing to accept and in specifically directing attorney William W. Knowles, not to file the appellants' brief which William W. Knowles had prepared; the Court further finds that William W. Knowles has performed his duty to prepare the appellants' brief in this appeal, and that by reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles should be absolved from any and all responsibility from the failure to timely file the appellants' brief, on or before March 19, 1990, as previously

ordered by this Court; the Court further finds that the Motion for Leave to Withdraw Appearance filed by William W. Knowles should be granted; the Court further finds that the Fifth Verified Petition for Extension of Time to File Appellants' Brief should be denied.

IT IS THEREFORE ORDERED as follows:

1. The Request for Relief from Court Order is granted, and that part of this Court's Order heretofore made and entered in this cause on March 9, 1990, which directed William W. Knowles to file with the Clerk of this Court the Brief of the appellants which he had prepared is vacated;
2. The Motion for Leave to Withdraw Appearance filed by William W. Knowles is granted and he is absolved from any and all responsibility to file a brief on behalf of the appellants in this cause and from any liability from having not filed a brief on behalf of the appellants, due to the specific direction and instruction from the appellant Raymond Harkrider;
3. The Fifth Verified Petition for Extension of Time to File Appellants' Brief is denied.

ALL OF WHICH IS ORDERED this 19th day of March, 1990.

/s/ Wesley W. Ratliff, Jr.
CHIEF JUDGE

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

GEORGIA CORY, BETTY)	
M. ROGERS and RAYMOND)	
HARKRIDER,)	
	)	Appellants,
)	
vs.)	
KATHRYN WILCOX and PHILIP	)	CAUSE NO.
E. WILCOX, as Personal	)	86A04-8912-
Representative of the Estate of	)	CV-544
Floyd E. Wilcox, Deceased;)	
KATHRYN WILCOX, individually,)	
ROY McCANDLISH and RUBY)	
McCANDLISH,)	
	)	Appellees.

ORDER
(Filed Mar. 20, 1990)

This Court having heretofore issued its order granting the appellants' Fourth Petition for Extension of Time in Which to File Appellants' Brief, granting the appellants to and including March 19, 1990 within which to file their appellants' Brief herein; and the appellants, by counsel, having thereafter filed their Fifth Petition for Extension of Time to File Appellants' Brief which this Court denied by its Order dated March 19, 1990; and the appellants having failed to file their brief on or before March 19, 1990, the Court now finds that this appeal should be dismissed.

IT IS THEREFORE ORDERED that this cause is dismissed by the reason of the failure of the appellants to

file their brief within the time as extended by the prior
Order of this Court.

ORDERED this 20th day of March, 1990.

/s/ Wesley W. Ratliff, Jr.
CHIEF JUDGE

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

BETTY M. ROGERS, RAYMOND)	
HARKRIDER, Individually,)	
and RAYMOND HARKRIDER, as)	APPEAL FROM
Personal Representative)	THE WARREN
of the Estate of)	COUNTY
Georgia Cory,)	CIRCUIT
Plaintiffs-Appellants)	COURT
vs)	CAUSE NO.
KATHRYN WILCOX and)	83-C-168
PHILIP E. WILCOX, as)	HONORABLE
Personal Representatives)	ROBERT M.
of the Estate of Floyd E.)	HALL
Wilcox, Deceased,)	JUDGE
KATHERINE WILCOX,)	
Individually, ROY)	
McCANDLISH and RUBY)	
McCANDLISH,)	
Defendants-Appellees	

VERIFIED PETITION FOR REHEARING
(Filed April 9, 1990)

Come now the Appellants, Betty M. Rogers, Raymond Harkrider, Individually, and Raymond Harkrider as Personal Representative of the Estate of Georgia Cory (collectively "Pearl's Family"), by counsel, pursuant to the Indiana Rules of Appellate Procedure, Appellate Rule 11, and for their Verified Petition for Rehearing show the Court as follows:

1. Pearl's Family are the next of kin of Pearl Posey ("Pearl"), who died on March 19, 1982.

2. On or about March 22, 1982, Floyd E. Wilcox, ("Mr. Wilcox") was appointed personal representative of Pearl's estate by the Tippecanoe Circuit Court.

3. On or about August 16, 1982, Pearl's family commenced a five count civil action against Mr. Wilcox, Mr. Wilcox's wife, Katherine Wilcox, and Roy and Ruby McCandlish, alleging and containing the following Counts:

Count I: An action against Mr. Wilcox, in his individual capacity, to recover for Pearl's estate title to Pearl's eighty (80) acre farm deeded to Mr. Wilcox while Mr. Wilcox served as Pearl's fiduciary;

Count II: An action against Mr. Wilcox, in his individual capacity, to require him to render a full and complete accounting in connection with any and all matters and transactions in which he was involved as Pearl's fiduciary;

Count III: An action against Mr. Wilcox, in his individual capacity, seeking to have Mr. Wilcox declared a constructive trustee of all assets and benefits he had obtained while acting as Pearl's fiduciary;

Count IV: An action against Mr. Wilcox seeking to have Mr. Wilcox removed as the personal representative of Pearl's estate and to have June Nelson, Pearl's niece, appointed personal representative of Pearl's estate;

Count V: A will contest.

4. On or about December 12, 1983, venue in Pearl's Family's five count civil action was ordered changed to the Warren County Circuit Court.

5. After a trial on the merits of all five counts of Pearl's Family's complaint, on March 23, 1989 the Warren Circuit Court entered its "Findings of Fact, Conclusions and Judgment" finding against Pearl's Family on each of the five counts.

6. On May 22, 1989, Pearl's Family timely filed their "Motion to Correct Errors" in the Warren Circuit Court, which motion was denied, after hearing, on August 8, 1989.

7. On September 6, 1989, Pearl's Family timely filed their "Praecipe" in the Warren Circuit Court, thereby initiating the appeal to this Court made the subject of this Verified Petition for Rehearing.

8. On December 5, 1989, the Record of Proceedings in this appeal was filed with the Clerk of this Court, thus establishing the time for filing of Pearl's Family's Appellants' Brief on or before January 5, 1989.

9. On or about December 8, 1989, Pearl's Family's counsel, William W. Knowles ("Mr. Knowles"), filed his first motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by December 18, 1989 Order of this Court, through and including February 5, 1990.

10. On or about January 19, 1990, Pearl's Family's counsel, Mr. Knowles, filed his second motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by January 24, 1990 Order of this Court, through and including February 26, 1990.

11. On or about February 15, 1990, Pearl's Family's counsel, Mr. Knowles, filed his third motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by February 22, 1990 Order of this Court, through and including March 7, 1990.

12. On or about the afternoon of February 27, 1990, less than nine (9) calendar days and seven (7) business days before the March 7, 1990 expiration of this Court's extension, Mr. Knowles transmitted to Mr. Harkrider, on behalf of Pearl's Family, a telefacsimile copy of Mr. Knowles' proposed brief ("Proposed Brief") which Mr. Knowles proposed to file on behalf of Pearl's Family in this appeal. At the bottom of page 4 of the Proposed Brief, Mr. Knowles stated the following:

"Although judgment was entered in favor of defendants on five counts, this appeal involves only Count 1 regarding the validity of the transfer of Pearl's 80A farm to Wilcox."

13. As verified in the sworn affidavit of Raymond Harkrider ("Mr. Harkrider's Affidavit"), a true and accurate copy of which is attached hereto as Exhibit A:

A. Prior to receipt of the Proposed Brief on the afternoon of February 27, 1990, Pearl's Family had experienced significant difficulty in obtaining substantive information from Mr. Knowles concerning Mr. Knowles' impressions and strategies in connection with this appeal, as well as the proposed contents of the Proposed Brief;

B. Not until the afternoon of February 27, 1990, upon receipt and review of the Proposed Brief, did Pearl's Family have knowledge that Mr. Knowles intended to expressly waive Pearl's Family's constitutional right, under Article VII,

Section 6, of the Indiana Constitution, to appellate review of the Warren Circuit Court's judgment against Pearl's Family on Counts II, III, IV and V of the five count civil action;

C. The very next day, on February 28, 1990, Mr. Harkrider, on behalf of Pearl's Family, contacted Mr. Knowles by telephone and informed Mr. Knowles that:

1. The Proposed Brief was unacceptable to Pearl's Family;
2. Pearl's Family wished to exercise their constitutional right to appellate review of the Warren Circuit Court's judgment against Pearl's Family on all five counts of the five count civil action;
3. Mr. Knowles was not authorized to file or otherwise submit the Proposed Brief to this Court or to the Appellees; and,
4. Mr. Knowles' authorization to proceed forward in this appeal was being withdrawn by Pearl's Family, subject to Mr. Knowles' and Pearl's Family's mutual agreement on the preparation of an Appellants' Brief acceptable to Pearl's Family.

14. On or about March 1, 1990, without the knowledge, authority or approval of Pearl's Family, William W. Knowles filed with this Court his fourth petition for extension of time within which to file Pearl's Family's Appellants' Brief, in which motion Mr. Knowles alleged, among other things, the following:

"5. This Court has seen fit to award sanctions against appellants in previous actions for (among other things) their "attempt to reargue many of the same issues already decided . . ." *In Re Guardianship of Posey* (1988), Ind.App. 532 N.E.2d 9, 11.

6. This Court has also criticized previous briefs for "needless redundancy", "argument which lacked cogency", and for the manner in which they were written which required "the maximum expenditure of time by both [appellee] and by this Court". *In Re Guardianship of Posey* (1986), Ind.App. 513 N.E.2d 674, 677.

7. I have prepared the Appellants' brief in the case at hand to the best of my ability and in compliance with Indiana Rules of Appellate Procedure, but my client, Appellant, Raymond Harkrider, disapproves of the brief and has directed me to include several additional issues.

8. I respect my client's wishes but I cannot in good faith, include the issues which he has demanded that I include.

9. I have advised my client that I will not revise the brief to include allegedly omitted issues and that I will be filing a motion to withdraw my appearance if he cannot approve the filing of the brief which I have prepared.

10. I represented in my third petition for extension of time that "absent extreme and unforeseen circumstances, no further extensions will be requested and appellant's brief will be filed on or before March 7, 1990." (See paragraph 10). I, therefore, attach a copy of the proposed appellant's brief which has been rejected by appellant and represent that I have done everything in my power to comply with the current March 7th deadline.

11. I believe that my withdrawal of appearance would constitute an extreme and unforeseen circumstance that would justify an additional extension of time to allow Mr. Harkrider the opportunity to hire new counsel to prepare a brief more to his liking."

15. On or about March 9, 1990, this Court entered its "Order" providing the following, in pertinent part:

"IT IS THEREFORE ORDERED as follows:

1. William W. Knowles, counsel for the appellants, is directed to file with the Clerk of this Court, the Brief of the Appellants which he has prepared in this appeal and he is granted ten (10) days from the date of this Order within which to finalize the preparation of said Brief and to file the same with the Clerk of this Court;
2. William W. Knowles is granted leave to withdraw his appearance from his appeal after the filing of the appellant's Brief if he so desires;
3. The appellants' Fourth Verified Petition for Extension of Time to File Appellants' Brief is denied in all other respects."

16. On or about March 11, 1990, Pearl's Family *tendered* to this Court their "Objections to Filing 'Brief of Appellants' Proposed by William W. Knowles - Request for Time to Obtain Other Counsel, Etc." ("Pearl's Family's Objections"), in which Pearl's Family alleged and confirmed the facts and circumstances alleged in this Verified Petition for Rehearing including, without limitation, that Mr. Knowles' representational authority herein was withdrawn by Pearl's Family on February 28, 1990, and that Mr. Knowles' filing of the Proposed Brief was highly prejudicial to Pearl's Family's rights and interests. In Pearl's Family's Objections, Pearl's Family requested the following relief:

"23.1 That Pearl's family be permitted to file these objections and requests;

23.2 To strike from the records of this Court Knowles' proposed BRIEF OF APPELLANTS;

23.3 In the alternative - to disregard Knowles' proposed BRIEF OF APPELLANTS and any inferences therefrom or effects thereof that might be damaging to interests of Pearl's family; and

23.4 To grant Pearl's family reasonable time to locate and retain other counsel who will enter appearance and represent Pearl's family in these proceedings and to grant such other counsel reasonable time to prepare and file on behalf of Pearl's family appellants' brief and other appropriate documents." (Emphasis Supplied).

17. On March 13, 1990, without Pearl's Family's knowledge, authority or approval, Mr. Knowles filed with this Court his Request for Relief from Court Order and Fifth Verified Petition for Extension of Time to File Appellants' Brief, Pursuant to IND. R. APP. P. 14(A) ("Request for Relief"). In his Request for Relief, Mr. Knowles alleged the following:

"1. Pursuant to this Court's Order of March 9, 1990, the undersigned, counsel for appellants, is directed to file appellant's brief by March 19, 1990.

2. Pursuant to Appellant, Raymond Harkrider's instruction, the undersigned, counsel for appellants, has been directed *not* to file this brief.

3. The undersigned owes a duty to the Court and a duty to his client and said duties are in conflict.

4. Thus, the undersigned files his Motion for Leave to Withdraw Appearance contemporaneously herewith and requests that appellant, Raymond Harkrider, be granted additional time to seek alternate counsel."

18. On March 19, 1990, this Court entered its "Order" providing, in pertinent part:

"And the Court, having examined said Request, Petition and Motion, taking judicial notice of its own records in this case and being duly advised, now finds that the record of the proceedings was filed in this cause on December 5, 1989; that on December 8, 1989 the appellants filed their first Petition for Extension of Time to File Brief which was granted, to and including February 5, 1990; that on January 19, 1990 the appellants filed their Second Petition for Extension of Time to File Appellants' Brief which was granted to and including February 26, 1990, said extension being ordered as "Final Extension"; that on February 15, 1990 the appellants filed their Third Petition for Extension of Time in Which to File Appellants' Brief which was granted to and including March 7, 1990; that on March 1, 1990 the appellants filed their Fourth Petition for Extension of Time to File Appellants Brief alleging therein that counsel for the appellants had prepared, what in his professional judgment, was an appropriate appellants' brief in this appeal, but that the appellant Raymond Harkrider, was not satisfied with the brief as counsel had prepared it, insisting that various issues which counsel had not presented should be advanced and argued, which counsel asserted he could not in good conscience advance and argue to this Court in light of previous opinions of this Court on previous appeals brought by the appellant Harkrider, to which the appellees filed their Appellees' Objections; that attached to the appellants' Fourth Petition for Extension of Time to File Appellants' Brief, as an exhibit thereto, was a copy of the proposed appellants' Brief as had been prepared by William W. Knowles, counsel for the appellants, as evidence of his good faith effort to comply with the

Court's order granting the appellants' Third Petition for Extension of Time to File Brief of Appellants, to and including March 7, 1990; that this Court, after having examined the tendered draft of appellants' brief as prepared by attorney William W. Knowles, and having found the same to have been prepared in good workmanship manner and in accordance with the requirements of Appellate Rules 8.2 and 8.3, this Court issued its Order on March 9, 1990, directing attorney William W. Knowles to file said brief with the Clerk of this Court within ten (10) days from the date of said Order, and granted William W. Knowles leave to withdraw his appearance for the appellants, if he so desired; that the appellant Raymond Harkrider directed attorney William W. Knowles not to comply with the March 9, 1990 Order of this Court and the appellant Raymond Harkrider also advised this court, by telephone, that he had directed attorney William W. Knowles not to file the appellants' brief as had been prepared by attorney William W. Knowles; the Court further finds that William W. Knowles has attempted to comply with the Order of this Court heretofore issued on March 9, 1990, but that he has been prevented from complying by reason of the directions from his client, the appellant Raymond Harkrider; that the appellants must accept the consequences of Raymond Harkrider's obstinance in refusing to accept and in specifically directing attorney William W. Knowles, not to file the appellants' brief which William W. Knowles had prepared; the Court further finds that William W. Knowles has performed his duty to prepare the appellants' brief in this appeal, and that by reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles

should be absolved from any and all responsibility from the failure to timely file the appellants' brief, on or before March 19, 1990, as previously ordered by this Court; the Court further finds that the Motion for Leave to Withdraw Appearance filed by William W. Knowles should be granted; the Court further finds that the Fifth Verified Petition for Extension of Time to File Appellants' Brief should be denied.

IT IS THEREFORE ORDERED as follows:

1. The Request for Relief from Court Order is granted, and that part of this Court's Order heretofore made and entered in this cause on March 9, 1990, which directed William W. Knowles to file with the Clerk of this Court the brief of the appellants which he had prepared is vacated;
2. The Motion for Leave to Withdraw Appearance filed by William W. Knowles is granted and he is absolved from any and all responsibility to file a brief on behalf of the appellants in this cause and from any liability from having to file a brief on behalf of the appellants, due to the specific direction and instruction from the appellant Raymond Harkrider;
3. The Fifth Verified Petition for Extension of Time to File Appellants' Brief is denied.

ALL OF WHICH IS ORDERED this 19th day of March, 1990."

19. On March 20, 1990, this Court entered its "Order" dismissing Pearl's Family's appeal for failure to file Pearl's Family's Appellants' Brief on or before March 19, 1990, as previously ordered by this Court.

20. By means of this Petition for Rehearing, Pearl's Family seeks review of, and rehearing on, this Court's

March 19, 1990 and March 20, 1990 Orders (collectively the "Subject Orders").

21. The Subject Orders are in error, and should be set aside, in that the Subject Orders violate Article I, Section 12, and Article VII, Section 6, of the Indiana Constitution and further violate the 5th and 14th Amendments of the United States Constitution, in failing to afford Pearl's Family their constitutional right to due process and equal protection under the law, in the following and other particulars:

A. Pearl's Family was not afforded a hearing or reasonable opportunity to be heard in connection with the following and other findings of fact or conclusions of law reached and determined by this Court:

1. "The appellant Raymond Harkrider directed attorney William W. Knowles *not to comply with the March 9, 1990 Order of this Court;*"

2. "The appellants must accept the consequences of Raymond Harkrider's *obstinacy* in refusing to accept and in specifically directing attorney William W. Knowles, not to file the appellants' brief which William W. Knowles had prepared;"

3. "By reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles should be *absolved from any and all responsibility* from the failure to timely file the appellants' brief, on or before March 19, 1990, as previously ordered by this Court[.]" (Emphasis Supplied).

B. Pearl's Family were unjustly and unlawfully prevented from exercising their constitutional right to one appeal;

C. The Subject Orders unlawfully penalize Pearl's Family for seeking to exercise their constitutional right to an appeal, and for refusing to waive such right, with respect to Counts II, III, IV and V of the five count civil action.

22. The Subject Orders are in error, and should be set aside, in that the absence of a justiciable case in controversy deprived this Court of Jurisdiction to determine whether Mr. Knowles fully, responsibly, professionally and ethically performed his professional responsibilities to Pearl's Family in connection with Mr. Knowles' representation of Pearl's Family in this proceeding.

23. The Subject Orders are in error, and should be set aside, in that they improperly disregard and overrule, and are in contradiction with, the following well-reasoned opinions expressing Indiana appellate courts' predisposition for deciding cases on the merits where procedural rules have been substantially complied with:

1. *Soft Water Utilities, Inc., v. LeFevre* (1973), 261 Ind. 260, 301 N.E.2d 745;

2. *White House v. Quinn* (1982), Ind.App., 443 N.E.2d 332;

3. *State Department of Administration v. Sights* (1981), Ind.App., 416 N.E.2d 445;

4. *Indiana State Board of Tax Commissioners v. Lyon* (1977), 172 Ind.App. 272, 359 N.E.2d 931;

5. *Yerkes v. Washington Manufacturing Company* (1975), 163 Ind.App. 692, 326 N.E.2d 629;

6. *Moore v. Funk* (1973), 155 Ind.App. 545, 293 N.E.2d 534.

24. In the event this Court reinstates Pearl's Family's appeal and considers this appeal on the merits, Pearl's Family should prevail on the merits.

25. Pearl's Family submits and files herewith its Brief in Support of Verified Petition for Rehearing, each and every material element and portion of which it hereby respectfully incorporates in this Verified Petition for Rehearing as if it were fully set forth herein.

WHEREFORE, Appellants respectfully pray that:

1. This Court grant their Verified Petition for Rehearing;
2. This Court vacate and set aside its Orders of March 19, 1990 and March 20, 1990;
3. This Court reinstate the Appellants' appeal and appellate rights in this appeal;
4. This Court grant the Appellants a reasonable period of time within which to obtain substitute counsel and to allow substitute counsel to familiarize himself or herself with the record of proceedings herein and to prepare an appropriate appellants' brief;
5. This Court order stricken from the record and disregard William W. Knowles' proposed Brief of Appellants, now made a part of the record of proceedings herein; and,
6. This Court grant any and all other relief which it deems proper in the premises.

Respectfully submitted,
STEWART & IRWIN
By /s/ Douglas R. Brown
Douglas R. Brown

Douglas R. Brown
Stewart & Irwin
Two Market Square Center, Suite 1100
251 East Ohio Street
Indianapolis, Indiana 46204-2118
317-639-5454

EXHIBIT A

AFFIDAVIT OF RAYMOND HARKRIDER ATTACHED
TO APPELLANTS' PETITION FOR REHEARING

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

RAYMOND HARKRIDER affiant being first duly
sworn on oath deposes and says:

1. Affiant individually and as executor of will of Georgia Cory deceased is beneficial owner of 50% of estate of Pearl Posey deceased and is one of the appellants in this appeal.
2. Affiant has read and is familiar with matters stated in subparagraphs A B and C of paragraph 13 of APPELLANTS' PETITION FOR REHEARING including matters stated in sub-subparagraphs 1 2 3 and 4 of said subparagraph C and affiant states that all such matters are true.

3. Affiant further states that affiant denies he ever requested William W. Knowles to violate or disregard any order of this Court.

Respectfully submitted

/s/ Raymond Harkrider
Raymond Harkrider

SUBSCRIBED AND SWORN TO
before me a notary public this
7th day of April 1990

/s/ Janet L. Peterson
Notary Public

OFFICIAL SEAL
JANET L. PETERSON
NOTARY PUBLIC STATE OF
ILLINOIS MY COMMISSION
EXP. JULY 27, 1992

Printed: Janet L. Peterson
Residing at: 1140 No. LaSalle
Street, Chicago, Illinois 60610

IN THE
COURT OF APPEALS OF INDIANA
CAUSE NO. 86A04-8912-CV-544

BETTY M. ROGERS, RAYMOND)	APPEAL FROM THE WARREN COUNTY CIRCUIT COURT
HARKRIDER, Individually,)	
and RAYMOND HARKRIDER, as)	
Personal Representative)	
of the Estate of)	CAUSE NO. 83-C-168
Georgia Cory,)	
Plaintiffs-Appellants)	HONORABLE ROBERT M. HALL JUDGE
vs)	
KATHRYN WILCOX and)	
PHILIP E. WILCOX, as)	
Personal Representatives)	
of the Estate of Floyd E.)	
Wilcox, Deceased,)	
KATHERINE WILCOX,)	Defendants-Appellees)
Individually, ROY)	
McCANDLISH and RUBY)	
McCANDLISH,)	

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Verified Petition for Rehearing has been served upon the following opposing counsel of record, by first class United States mail, postage prepaid, on the 9th day of April, 1990.

Steven R. Pennell
Stuart & Branigan
The Life Building
P.O. Box 1010
Lafayette, Indiana 47902

App. 61

/s/ Douglas R. Brown
Douglas R. Brown

Douglas R. Brown
Stewart & Irwin
Two Market Square Center, Suite 1100
251 East Ohio Street
Indianapolis, Indiana 46204-2118
317-639-5454

STATE OF INDIANA
CLERK OF THE SUPREME COURT
COURT OF APPEALS AND TAX COURT
DANIEL ROCK HEISER, CLERK
217 STATE HOUSE
SEAL
INDIANAPOLIS, 46204
TELEPHONE 317-232-1930

HARKRIDER, RAYMOND	Cause Number
3 FIRST NATIONAL PLAZA	86A04-8912-CV-00544
SUITE 1950	LOWER CAUSE
CHICAGO IL	83C168

CORY, GEORGIA ET AL VS WILCOX, KATHRYN ET AL
ESTATE OF:

You are hereby notified that the COURT OF APPEALS has on this day 4/26/90 APPELLANT'S PETITION FOR REHEARING DENIED. WESLEY W. RATLIFF, JR., CHIEF JUDGE.

WITNESS my name and the seal of said Court, this day of 26TH APRIL, 1990

/s/ Daniel Heiser

IN THE
SUPREME COURT OF INDIANA
CAUSE NO. 86A04-8912-CV-544

BETTY M. ROGERS, RAYMOND HARKRIDER, Individually, and RAYMOND HARKRIDER, as Personal Representative of the Estate of Georgia Cory, Plaintiffs-Appellants) APPEAL FROM THE WARREN COUNTY CIRCUIT COURT CAUSE NO. 83-C-168
vs) HONORABLE ROBERT M. HALL JUDGE
KATHRYN WILCOX and PHILIP E. WILCOX, as Personal Representatives of the Estate of Floyd E. Wilcox, Deceased, KATHERINE WILCOX, Individually, ROY McCANDLISH and RUBY McCANDLISH, Defendants-Appellees)

PETITION TO TRANSFER

(Filed May 16, 1990)

Come now the Appellants, Betty M. Rogers, Raymond Harkrider, Individually, and Raymond Harkrider as Personal Representative of the Estate of Georgia Cory (collectively "Pearl's Family"), by counsel, pursuant to the Indiana Rules of Appellate Procedure, Appellate Rule 11, and for their Petition to Transfer show the Court as follows:

1. Pearl's Family are the next of kin of Pearl Posey ("Pearl"), who died on March 19, 1982.
2. On or about March 22, 1982, Floyd E. Wilcox, ("Mr. Wilcox") was appointed personal representative of Pearl's estate by the Tippecanoe Circuit Court.

3. On or about August 16, 1982, Pearl's family commenced a five count civil action against Mr. Wilcox, Mr. Wilcox's wife, Katherine Wilcox, and Roy and Ruby McCandlish, alleging and containing the following Counts:

Count I: An action against Mr. Wilcox, in his individual capacity, to recover for Pearl's estate title to Pearl's eighty (80) acre farm deeded to Mr. Wilcox while Mr. Wilcox served as Pearl's fiduciary;

Count II: An action against Mr. Wilcox, in his individual capacity, to require him to render a full and complete accounting in connection with any and all matters and transactions in which he was involved as Pearl's fiduciary;

Count III: An action against Mr. Wilcox, in his individual capacity, seeking to have Mr. Wilcox declared a constructive trustee of all assets and benefits he had obtained while acting as Pearl's fiduciary;

Count IV: An action against Mr. Wilcox seeking to have Mr. Wilcox removed as the personal representative of Pearl's estate and to have June Nelson, Pearl's niece, appointed personal representative of Pearl's estate;

Count V: A will contest.

4. On or about December 12, 1983, venue in Pearl's Family's five count civil action was ordered changed to the Warren Circuit Court.

5. After a trial on the merits of all five counts of Pearl's Family's complaint, on March 23, 1989 the Warren Circuit Court entered its "Findings of Fact, Conclusions and Judgment" finding against Pearl's Family on each of the five counts.

6. On May 22, 1989, Pearl's Family timely filed their "Motion to Correct Errors" in the Warren Circuit Court, which motion was denied, after hearing, on August 8, 1989.

7. On September 6, 1989, Pearl's Family timely filed their "Praecipe" in the Warren Circuit Court, thereby initiating an appeal to the Indiana Court of Appeals.

8. On December 5, 1989, the Record of Proceedings in this appeal was filed with the Clerk of the Court of Appeals, thus establishing the time for filing of Pearl's Family's Appellants' Brief on or before January 5, 1989.

9. On or about December 8, 1989, Pearl's Family's counsel, William W. Knowles ("Mr. Knowles"), filed his first motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by December 18, 1989 Order of the Court of Appeals, through and including February 5, 1990.

10. On or about January 19, 1990, Pearl's Family's counsel, Mr. Knowles, filed his second motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by January 24, 1990 Order of the Court of Appeals, through and including February 26, 1990.

11. On or about February 15, 1990, Pearl's Family's counsel, Mr. Knowles, filed his third motion for extension of time within which to file Pearl's Family's Appellants' Brief, which time was extended, by February 22, 1990 Order of the Court of Appeals, through and including March 7, 1990.

12. On or about the afternoon of February 27, 1990, less than nine (9) calendar days and seven (7) business days before the March 7, 1990 expiration of the Court of Appeals' extension, Mr. Knowles transmitted to Mr. Harkrider, on behalf of Pearl's Family, a telefacsimile copy of Mr. Knowles' proposed brief ("Proposed Brief") which Mr. Knowles proposed to file with the Court of Appeals on behalf of Pearl's Family. At the bottom of page 4 of the Proposed Brief, Mr. Knowles stated the following:

"Although judgment was entered in favor of defendants on five counts, this appeal involves only Count 1 regarding the validity of the transfer of Pearl's 80A farm to Wilcox."

13. As verified in the sworn affidavit of Raymond Harkrider ("Mr. Harkrider's Affidavit"), a true and accurate copy of which was attached as Exhibit A to Pearl's Family's Verified Petition for Rehearing, filed in the Court of Appeals on April 9, 1990:

A. Prior to receipt of the Proposed Brief on the afternoon of February 27, 1990, Pearl's Family had experienced significant difficulty in obtaining substantive information from Mr. Knowles concerning Mr. Knowles' impressions and strategies in connection with this appeal, as well as the proposed contents of the Proposed Brief;

B. Not until the afternoon of February 27, 1990, upon receipt and review of the Proposed Brief, did Pearl's Family have knowledge that Mr. Knowles intended to expressly waive Pearl's Family's constitutional right, under Article VII, Section 6, of the Indiana Constitution, to appellate review of the Warren Circuit Court's judgment against Pearl's Family on Counts II, III, IV and V of the five count civil action;

C. The very next day, on February 28, 1990, Mr. Harkrider, on behalf of Pearl's Family, contacted Mr. Knowles by telephone and informed Mr. Knowles that:

1. The Proposed Brief was unacceptable to Pearl's Family;
2. Pearl's Family wished to exercise their constitutional right to appellate review of the Warren Circuit Court's judgment against Pearl's Family on all five counts of the five count civil action;
3. Mr. Knowles was not authorized to file or otherwise submit the Proposed Brief to this Court or to the Appellees; and,
4. Mr. Knowles' authorization to proceed forward in this appeal was being withdrawn by Pearl's Family, subject to Mr. Knowles' and Pearl's Family's mutual agreement on the preparation of an Appellants' Brief acceptable to Pearl's Family.

14. On or about March 1, 1990, without the knowledge, authority or approval of Pearl's Family, William W. Knowles filed with the Court of Appeals his fourth petition for extension of time within which to file Pearl's Family's Appellants' Brief, in which motion Mr. Knowles alleged, among other things, the following:

"5. [The Court of Appeals] has seen fit to award sanctions against appellants in previous actions for (among other things) their 'attempt to reargue many of the same issues already decided . . . ' *In Re Guardianship of Posey* (1988), Ind.App. 532 N.E.2d 9, 11.

6. [The Court of Appeals] has also criticized previous briefs for 'needless redundancy', 'argument which lacked cogency', and for the manner

in which they were written which required 'the maximum expenditure of time by both [appellee] and by this Court'. *In Re Guardianship of Posey* (1986), Ind.App. 513 N.E.2d 674, 677.

7. I have prepared the Appellants' brief in the case at hand to the best of my ability and in compliance with Indiana Rules of Appellate Procedure, but my client, Appellant, Raymond Harkrider, disapproves of the brief and has directed me to include several additional issues.

8. I respect my client's wishes but I cannot in good faith, include the issues which he has demanded that I include.

9. I have advised my client that I will not revise the brief to include allegedly omitted issues and that I will be filing a motion to withdraw my appearance if he cannot approve the filing of the brief which I have prepared.

10. I represented in my third petition for extension of time that 'absent extreme and unforeseen circumstances, no further extensions will be requested and appellant's brief will be filed on or before March 7, 1990.' (See paragraph 10). I, therefore, attach a copy of the proposed appellant's brief which has been rejected by appellant and represent that I have done everything in my power to comply with the current March 7th deadline.

11. I believe that my withdrawal of appearance would constitute an extreme and unforeseen circumstance that would justify an additional extension of time to allow Mr. Harkrider the opportunity to hire new counsel to prepare a brief more to his liking."

15. On or about March 9, 1990, the Court of Appeals entered its "Order" providing the following, in pertinent part:

"IT IS THEREFORE ORDERED as follows:

1. William W. Knowles, counsel for the appellants, is directed to file with the Clerk of this Court, the Brief of the Appellants which he has prepared in this appeal and he is granted ten (10) days from the date of this Order within which to finalize the preparation of said Brief and to file the same with the Clerk of this Court;
2. William W. Knowles is granted leave to withdraw his appearance from this appeal after the filing of the appellant's Brief if he so desires;
3. The appellants' Fourth Verified Petition for Extension of Time to File Appellant's Brief is denied in all other respects."

16. On or about March 11, 1990, Pearl's Family *tendered* to the Court of Appeals their "Objections to Filing 'Brief of Appellants' Proposed by William W. Knowles - Request for Time to Obtain Other Counsel, Etc." ("Pearl's Family's Objections"), in which Pearl's Family alleged and confirmed the facts and circumstances alleged in this Petition to Transfer including, without limitation, that Mr. Knowles' representational authority herein was withdrawn by Pearl's Family on February 28, 1990, and that Mr. Knowles' filing of the Proposed Brief was highly prejudicial to Pearl's Family's rights and interests. In Pearl's Family's Objections, Pearl's Family requested the following relief:

"23.1 That Pearl's family be permitted to *file* these objections and requests;

23.2 To strike from the records of [the Court of Appeals] Knowles' proposed BRIEF OF APPELLANTS;

23.3 In the alternative - to the disregard Knowles' proposed BRIEF OF APPELLANTS

and any inferences therefrom or effects thereof that might be damaging to interests of Pearl's family; and

23.4 To grant Pearl's family reasonable time to locate and retain other counsel who will enter appearance and represent Pearl's family in these proceedings and to grant such other counsel reasonable time to prepare and file on behalf of Pearl's family appellants' brief and other appropriate documents." (Emphasis Supplied).

17. On March 13, 1990, without Pearl's Family's knowledge, authority or approval, Mr. Knowles filed with the Court of Appeals his "Request for Relief from Court Order and Fifth Verified Petition for Extension of Time to File Appellants' Brief, Pursuant to IND. R. APP. P. 14(A)" ("Request for Relief"). In his Request for Relief, Mr. Knowles alleged the following:

"1. Pursuant to [the Court of Appeals'] Order of March 9, 1990, the undersigned, counsel for appellants, is directed to file appellant's brief by March 19, 1990.

2. Pursuant to Appellant, Raymond Harkrider's instruction, the undersigned, counsel for appellants, has been directed *not* to file this brief.

3. The undersigned owes a duty to the Court and a duty to his client and said duties are in conflict.

4. Thus, the undersigned files his Motion for Leave to Withdraw Appearance contemporaneously herewith and requests that appellant, Raymond Harkrider, be granted additional time to seek alternate counsel."

18. On March 19, 1990, the Court of Appeals entered its "Order" providing, in pertinent part:

"And the Court, having examined said Request, Petition and Motion, taking judicial notice of its own records in this case and being duly advised, now finds that the record of the proceedings was filed in this cause on December 5, 1989; that on December 8, 1989 the appellants filed their first Petition for Extension of Time to File Brief which was granted, to and including February 5, 1990; that on January 19, 1990 the appellants filed their Second Petition for Extension of Time to File Appellants' Brief which was granted to and including February 26, 1990, said extension being ordered as "Final Extension"; that on February 15, 1990 the appellants filed their Third Petition for Extension of Time in Which to File Appellants' Brief which was granted to and including March 7, 1990; that on March 1, 1990 the appellants filed their Fourth Petition for extension of time to File Appellants Brief alleging therein that counsel for the appellants had prepared, what in his professional judgment, was an appropriate appellants' brief in this appeal, but that the appellant Raymond Harkrider, was not satisfied with the brief as counsel had prepared it, insisting that various issues which counsel had not presented should be advanced and argued, which counsel asserted he could not in good conscience advance and argue to this Court in light of previous opinions of this Court on previous appeals brought by the appellant Harkrider, to which the appellees filed their Appellees' Objections; that attached to the appellants' Fourth Petition for Extension of Time to File Appellants' Brief, as an exhibit thereto, was a copy of the proposed appellants' Brief as had been prepared by William W. Knowles, counsel for the appellants, as evidence of his good faith effort to comply with the Court's order granting the appellants' Third Petition for Extension of Time to File Brief of Appellants, to and including March 7, 1990; that

this Court, after having examined the tendered draft of appellants' brief as prepared by attorney William W. Knowles, and having found the same to have been prepared in good workmanship manner and in accordance with the requirements of Appellate Rules 8.2 and 8.3, this Court issued its Order on March 9, 1990, directing attorney William W. Knowles to file said brief with the Clerk of this Court within ten (10) days from the date of said Order, and granted William W. Knowles leave to withdraw his appearance for the appellants, if he so desired; that the appellant Raymond Harkrider directed attorney William W. Knowles not to comply with the March 9, 1990 Order of this Court and the appellant Raymond Harkrider also advised this court, by telephone, that he had directed attorney William W. Knowles not to file the appellants' brief as had been prepared by attorney William W. Knowles; the Court further finds that William W. Knowles has attempted to comply with the Order of this Court heretofore issued on March 9, 1990, but that he has been prevented from complying by reason of the directions from his client, the appellant Raymond Harkrider; that the appellants must accept the consequences of Raymond Harkrider's obstinacy in refusing to accept and in specifically directing attorney William W. Knowles, not to file the appellants' brief which William W. Knowles had prepared; the Court further finds that William W. Knowles has performed his duty to prepare the appellants' brief in this appeal, and that by reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles should be absolved from any and all responsibility from the failure to timely file the appellants' brief, on or before March 19, 1990, as

previously ordered by this Court; the Court further finds that the Motion for Leave to Withdraw Appearance filed by William W. Knowles should be granted; the Court further finds that the Fifth Verified Petition for Extension of Time to File Appellants' Brief should be denied.

IT IS THEREFORE ORDERED as follows:

1. The Request for Relief from Court Order is granted, and that part of this Court's Order heretofore made and entered in this cause on March 9, 1990, which directed William W. Knowles to file with the Clerk of this Court the brief of the appellants which he had prepared is vacated;
2. The Motion for Leave to Withdraw Appearance filed by William W. Knowles is granted and he is absolved from any and all responsibility to file a brief on behalf of the appellants in this cause and from any liability from having to file a brief on behalf of the appellants, due to the specific direction and instruction from the appellant Raymond Harkrider;
3. The Fifth Verified Petition for Extension of Time to File Appellants' Brief is denied.

ALL OF WHICH IS ORDERED this 19th day of March, 1990."

19. On March 20, 1990, the Court of Appeals entered its "Order" dismissing Pearl's Family's appeal for failure to file Pearl's Family's Appellants' Brief on or before March 19, 1990, as previously ordered by the Court of Appeals.

20. On April 9, 1990, Pearl's Family filed in the Court of Appeals, their Verified Petition for Rehearing and Brief in Support of Verified Petition for Rehearing,

which Verified Petition for Rehearing was denied by the Court of Appeals on April 26, 1990.

21. By means of this Petition to Transfer, Pearl's Family seeks transfer to this Court from the Court of Appeals' March 19, 1990 and March 20, 1990 Orders (collectively the "Subject Orders").

22. The Subject Orders are in error, and should be set aside, in that the Subject Orders violate Article I, Section 12, and Article VII, Section 6, of the Indiana Constitution and further violate the 5th and 14th Amendments of the United States Constitution, in failing to afford Pearl's Family their constitutional right to due process and equal protection under the law, in the following and other particulars:

A. Pearl's Family was not afforded a hearing or reasonable opportunity to be heard in connection with the following and other findings of fact or conclusions of law reached and determined by the Court of Appeals:

1. "The appellant Raymond Harkrider directed attorney William W. Knowles *not to comply* with the March 9, 1990 Order of this Court;"

2. "The appellants must accept the consequences of Raymond Harkrider's *obstinacy* in refusing to accept and in specifically directing attorney William W. knowles, not to file the appellants' brief which William W. Knowles had prepared;"

3. "By reason of the specific direction of his client, Raymond Harkrider, not to file the appellants' brief as he had prepared it, said William W. Knowles should be *absolved from any and all responsibility* from the failure

to timely file the appellants' brief, on or before March 19, 1990, as previously ordered by this Court[.]" (Emphasis Supplied).

B. Pearl's Family were unjustly and unlawfully prevented from exercising their constitutional right to one appeal;

C. The Subject Orders unlawfully penalize Pearl's Family for seeking to exercise their constitutional right to one appeal, and for refusing to waive such right with respect to Counts II, III, IV and V of the five count civil action.

23. The Subject Orders are in error, and should be set aside, in that the absence of a justiciable case in controversy deprived the Court of Appeals of jurisdiction to determine whether Mr. Knowles fully, responsibly, professionally and ethically performed his professional responsibilities to Pearl's Family in connection with Mr. Knowles' representation of Pearl's Family in this proceeding.

24. The Subject Orders are in error, and should be set aside, in that they improperly disregard and overrule, and are in contradiction with, the following well-reasoned opinions expressing Indiana Appellate Court's predisposition for deciding cases on the merits where procedural rules have been substantially complied with:

1. *Soft Water Utilities, Inc., v. LeFevre* (1973), 267 Ind. 260, 301 N.E.2d 745;

2. *White House v. Quinn* (1982), Ind.App., 443 N.E.2d 332;

3. *State Department of Administration v. Sights* (1981), Ind.App., 416 N.E.2d 445;

4. *Indiana State Board of Tax Commissioners v. Lyon* (1977), 172 Ind.App. 272, 359 N.E.2d 931;

5. *Yerkes v. Washington Manufacturing Company* (1975), 163 Ind.App. 692, 326 N.E.2d 629;

6. *Moore v. Funk* (1973), 155 Ind.App. 545, 293 N.E.2d 534.

25. In the event this Court grants Pearl's Family's Petition to Transfer, reinstates Pearl's Family's appeal and orders the Court of Appeals to consider this appeal on the merits, Pearl's Family should prevail on the merits.

26. Pearl's Family submits and files herewith its Brief in Support of Petition to Transfer, each and every material element and portion of which is hereby respectfully incorporated in this Petition to Transfer as if it were fully set forth herein.

WHEREFORE, Appellants respectfully pray that:

1. This Court grant their Petition to Transfer;
2. This Court vacate and set aside the Court of Appeals' Orders of March 19, 1990 and March 20, 1990;
3. This Court reinstate the Appellants' appeal and appellate rights in this appeal;
4. This Court grant the Appellants a reasonable period of time within which to obtain substitute counsel and to allow substitute counsel to familiarize himself or herself with the record of proceedings herein and to prepare an appropriate appellants' brief;
5. This Court order stricken from the record and order disregarded William W. Knowles' proposed Brief of Appellants, now made a part of the record of proceedings herein; and,

6. This Court grant any and all other relief which it deems proper in the premises.

Respectfully submitted,

STEWART & IRWIN

By /s/ Douglas R. Brown
Douglas R. Brown

Douglas R. Brown
Stewart & Irwin
Two Market Square Center, Suite 1100
251 East Ohio Street
Indianapolis, Indiana 46204-2118
317-639-5454

STATE OF INDIANA
CLERK OF THE SUPREME COURT,
COURT OF APPEALS AND TAX COURT

DANIEL ROCK HEISER, CLERK
217 STATE HOUSE

SEAL

INDIANAPOLIS, 46204
TELEPHONE 317-232-1930

STEPHEN RICHARD PENNELL

P.O. BOX 1010
LAFAYETTE IN 47902-0000

Cause Number
86A04-8912-CV-00544
LOWER CAUSE
83C168

CORY, GEORGIA ET AL VS WILCOX, KATHRYN ET AL
ESTATE OF:

You are hereby notified that the SUPREME COURT has
on this day 8/29/90 APPELLANTS' PETITION TO
TRANSFER IS HEREBY DENIED. RANDALL T. SHEP-
ARD, CHIEF JUSTICE ALL JUSTICES VOTE TO DENY,
EXCEPT DICKSON, J., WHO IS NOT PARTICIPATING.
APPELLANTS' REQUEST FOR ORAL ARGUMENT IS
HEREBY DENIED. RANDALL T. SHEPARD, CHIEF JUS-
TICE ALL JUSTICES VOTE TO DENY, EXCEPT DICK-
SON, J., WHO IS NOT PARTICIPATING.

WITNESS my name and the seal of said Court,
this day of 29TH AUGUST, 1990

/s/ Dan Heiser
Clerk Supreme Court, Court
of Appeals and Tax Court

STATE OF INDIANA) IN THE HAMILTON
COUNTY OF HAMILTON) SUPERIOR COURT 1
WILLIAM W. KNOWLES,)
Plaintiff,)
vs.)
RAYMOND HARKRIDER,)
Defendant.)
ss:
CAUSE NO: 29D01-
9003-CP109

AMENDED COMPLAINT

Comes now plaintiff, William W. Knowles, and for his complaint against the defendant herein alleges and says:

1. Plaintiff is an attorney in private practice with an office located at 811 South Range Line Road, Carmel, Hamilton County, Indiana.
2. Defendant telephoned plaintiff at plaintiff's office in November, 1989, at which time defendant requested that plaintiff represent defendant in a civil appeal.
3. Plaintiff sent a contract to defendant and said contract was signed by defendant and returned to Mr. Knowles' office with the \$5,200.00 retainer on December 4, 1989. A copy of said contract is attached hereto and labeled Exhibit A.
4. Plaintiff provided legal services to defendant pursuant to the terms of the contract and defendant currently owes plaintiff \$29,804.09. Copies of attorney fee statements are attached hereto and labeled Exhibit B in 7 parts.

5. Defendant has wholly failed and refused to pay said fees, despite demand from plaintiff.

WHEREFORE, plaintiff, William W. Knowles, demands judgment against defendant in the amount of \$29,804.09, pre-judgment interest, costs of this action, reasonable attorney fees with respect to this action [in accordance with Legal Representation Agreement Part II, paragraph II(C) (6) (pp. 5 and 6)], and all other proper relief.

KNOWLES & ASSOCIATES

/s/ William W. Knowles
William W. Knowles

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 1990, a true and complete copy of the preceding pleading was served by depositing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Douglas R. Brown
STEWART & IRWIN
Two Market Square Center
Suite 1100
251 East Ohio Street
Indianapolis, IN 46204

/s/ William W. Knowles
William W. Knowles

KNOWLES & ASSOCIATES
811 South Range Line Road
Carmel, IN 46032
317/848-4360

(EXHIBITS OMITTED)

STATE OF INDIANA) IN THE TIPTON CIRCUIT
COUNTY OF TIPTON) COURT
) SS:
) CAUSE NO.
) 80C01-9007-CP163

WILLIAM W. KNOWLES,)
) Plaintiff,
 vs.)
 RAYMOND HARKRIDER,)
) Defendant.)

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, William W. Knowles, and respectfully moves the Court to grant summary judgment in this cause for the reason that there is no genuine issue as to any material fact, and the plaintiff is entitled to judgment as a matter of law.

Respectfully submitted,
KNOWLES & ASSOCIATES
/s/ William W. Knowles
William W. Knowles

MEMORANDUM IN SUPPORT OF MOTION

Comes now the plaintiff, William W. Knowles and in support of his Motion for Summary Judgment would show the Court as follows:

Facts:

William W. Knowles is an attorney engaged in private practice. On November 27, 1989, Mr. Knowles was

contacted by telephone by Raymond Harkrider, who was calling from Chicago, Illinois, where he resides. Mr. Harkrider explained that he was an attorney who had practiced law in Chicago for over fifty (50) years and he was searching for an attorney in Indiana who would prepare an appeal for him. Mr. Harkrider was a plaintiff in an action for which judgment had been entered against him and he wished to appeal. His counsel at trial had been Richard Ewing and Donn Wray of Stewart & Irwin and they did not wish to handle the appeal, but had recommended Mr. Knowles. Mr. Knowles forwarded a contract to Mr. Harkrider which he signed and returned on December 4, 1989, with a \$5,000.00 retainer (Copy of contract attached as Exhibit A).

The Motion to Correct Errors had been prepared by Stewart & Irwin prior to Knowles' being retained. The transcript of the case for appeal was also prepared by Stewart & Irwin and was filed on December 8, 1989. Mr. Knowles received the transcript on that date, and began work on the appellate brief which was due January 4, 1990. The transcript consisted of 1,404 pages in seven volumes and it was immediately apparent that Mr. Knowles would be unable to familiarize himself with the case and prepare a brief in thirty (30) days; consequently, a verified petition for extension of time to file appellant's brief was filed and the extension was granted to and including February 5, 1990.

During the next 60 days, Mr. Harkrider communicated with Mr. Knowles by way of extensive telephone conferences and lengthy correspondence. These communications and independent legal research revealed that Mr. Harkrider had already litigated, appealed and lost

five other appeals at least tangentially related to the instant appeal. These were: *Posey v. Wilcox* (1983) Ind.App.; 451 N.E.2d 1135 (unpublished Memorandum Opinion July 20, 1983); *In re the Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674; *Posey v. Lafayette Bank & Trust Co.* (1987) Ind., 512 N.E.2d 155; *In re the Guardianship of Posey* (1988) Ind.App., 532 N.E.2d 9; and, *In re Estate of Posey* (1990) Ind.App., 548 N.E.2d 1205. Not only did Mr. Harkrider lose these five appeals, but he was criticized for his "needless redundancy", "argument which lacked cogency", and for the manner in which his briefs were written to require "the maximum expenditure of time by both [appellee] and by this Court". *In re Guardianship of Posey* (1986) Ind.App., 513 N.E.2d 674, 677. The Court also saw fit to award sanctions against Mr. Harkrider for his "attempt to reargue many of the same issues already decided . . ." *In re Guardianship of Posey* (1988) Ind.App., 532 N.E.2d 9, 11.

Mr. Knowles filed for a second extension of time which was granted to and including February 26, 1990, and proceeded to prepare the brief. The appellate brief was ready for filing on February 26th, but Mr. Harkrider insisted on arguing several additional issues. The issues which Mr. Harkrider insisted upon had all been decided in previous appeals, had no factual basis, or were not supported by the law. They had also not been included in the motion to correct errors. Mr. Knowles filed a request for a third extension of time (attached as Exhibit B) in order to work out a compromise with Mr. Harkrider and to impress upon him the importance of briefing only those issues which had a basis in fact and in law and

which were relevant to the instant case. A third extension was granted to and including March 7, 1990. (Exhibit C).

By March 1, Mr. Harkrider was still insisting that several additional issues be briefed and he ordered Mr. Knowles *not* to file the brief which had been prepared. Mr. Knowles filed a fourth petition for extension of time and requested leave to withdraw his appearance, stating that the brief was ready for filing, but the client would not authorize the filing (Exhibit D). As a gesture of good faith and in an effort to impress upon the court the seriousness of the situation, Mr. Knowles attached a copy of his proposed appellant's brief as an exhibit to his petition (Exhibit E).

On March 9, 1990, Mr. Harkrider telephoned Mr. Knowles' secretary and left a message that Knowles no longer had authority to act for Harkrider. On that same day, the Court of Appeals ordered Mr. Knowles to file the brief within 10 days and further ruled that his motion to withdraw appearance would not be granted until the brief was filed (Exhibit F). Knowles then filed a Request for Relief From Court Order and Fifth Petition for Extension of Time (Exhibit G).

On March 19, 1990, The Court of Appeals granted the request for relief from court order, granted Mr. Knowles' motion to withdraw his appearance and absolved him from all liability to file a brief finding that the proposed brief had been "prepared in good workmanship manner and in accordance with the requirements of Appellate Rules 8.2 and 8.3", and that Mr. Knowles had "performed his duty to prepare the appellant's brief in this appeal." (Exhibit H).

Pursuant to the terms of the contract between Mr. Knowles and Mr. Harkrider, Mr. Knowles performed his duty to prepare appellant's brief and Mr. Harkrider owes attorney fees in the sum of \$29,804.09. (Copies of attorney fee statements attached as Exhibit I).

Issue:

Is there a genuine issue as to a material fact which would make summary judgment inappropriate at this time?

Law:

Although Summary judgment should be applied with considerable caution and is not an appropriate vehicle in some cases, construction of a written contract is generally a question of law for which summary judgment is particularly appropriate. *Kordick v. Merchants Nat. Bank and Trust Co. of Indianapolis* (1986) 496 N.E.2d 119. The contract in question clearly provides that Mr. Harkrider will pay the hourly rate of \$125.00 to Mr. Knowles and Mr. Knowles will "handle the appeal of the five-count civil action styled as Georgia Cory, et al, Plaintiffs (appellants) v. Kathy Wilcox as Personal Representative of the Estate of Floyd Wilcox, Deceased, et al., Defendants (Appellees), presently pending in the Warren County Circuit Court under Cause No. 83C-168." Furthermore, the Indiana Court of Appeals has stated that Mr. Knowles performed his duty to prepare the appellant's brief in this appeal and that the appellant's "must accept the consequences of Raymond Harkrider's obstinacy in refusing to accept and in specifically directing attorney, William W.

Knowles, not to file the appellant's brief which William W. Knowles had prepared." (Exhibit H).

Conclusion:

There is no genuine issue of material fact in the case at hand and summary judgment should be entered in favor of William W. Knowles in the sum of \$29,804.09.

Respectfully submitted,

KNOWLES & ASSOCIATES

/s/ William W. Knowles
William W. Knowles

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of October, 1990, a true and complete copy of the foregoing pleading was deposited in the United States mail, postage prepaid, addressed as follows:

Douglas R. Brown
STEWART & IRWIN
Two Market Square Center, Suite 1100
251 East Ohio Street
Indianapolis, IN 46204

Ben B. Hobbs
125 North Main Street
Tipton, IN 46072

/s/ William W. Knowles
William W. Knowles

KNOWLES & ASSOCIATES
811 South Range Line Road
Carmel, IN 46032
317/848-4360

(EXHIBITS OMITTED)

